

United States
Circuit Court of Appeals

For the Ninth Circuit.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Plaintiff in Error,
vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Southern District of California,
Southern Division.

Filed

MAR 10 1917

F. D. Monckton,

Clerk.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Plaintiff in Error:

ALFRED F. McDONALD, Esq., and JUD. R.
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For Defendant in Error:

ALBERT SCHOONOVER, Esq., United
States Attorney, Los Angeles, California.

ROBERT O'CONNOR, Esq., Assistant United
States Attorney, Los Angeles, California.

CLYDE R. MOODY, Esq., Assistant United
States Attorney, Los Angeles, California.

[4*]

*In the District Court of the United States, Southern
District of California, Southern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

Writ of Error.

United States of America—ss.

The President of the United States of America, to
the Honorable, the Judge of the District Court
of the United States for the Southern District
of California, Southern Division, Greeting:

*Page-number appearing at foot of page of original certified Transcript
of Record.

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said District Court before you, between James B. Simpson, indicted as James B. Miller, plaintiff in error, and the United States of America, defendant, in error, a manifest error hath happened to the great damage of said James B. Simpson, otherwise known as James B. Miller, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ so that you have the same at the city of San Francisco, in the State of California, within thirty days from the date hereof in the said Circuit Court [5] of Appeals, to be then and there held that the record and proceedings aforesaid, being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States,

the 15th day of December, 1916.

[Seal]

WM. M. VAN DYKE,

Clerk of the United States District Court, Southern
District of California, Southern Division.

By Chas. N. Williams,

Deputy Clerk.

Allowed by

OSCAR A. TRIPPET,

Judge.

I hereby certify that a copy of the within Writ of Error was on the 15th day of December, 1916, lodged in the clerk's office of the United States District Court for the Southern District of California, Southern Division, for the said defendant in error.

WM. M. VAN DYKE,

Clerk of the United States District Court, Southern
District of California, Southern Division.

By Chas. N. Williams,

Deputy Clerk. [6]

[Endorsed]: No. 1098. In the United States District Court, Southern District of California, Southern Division. United States of America, Plaintiff, vs. James B. Miller, etc., Defendant. Writ of Error. Received Copy of Within Writ of Error this — day of December, 1916. —, Attorney for —. Filed Dec. 15, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.

[7]

*In the District Court of the United States, Southern
District of California, Southern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

Citation on Writ of Error

United States of America,
Southern District of California,
Southern Division,—ss.

To the United States of America, and to ALBERT
SCHOONOVER, U. S. Attorney for the South-
ern District of California, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the District Court of the United States, for the Southern District of California, Southern Division, wherein James B. Simpson, indicted as James B. Miller, is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Los Angeles, California,
in said District, this 15th day of December, 1916.

OSCAR A. TRIPPET,
United States District Judge for the Southern Dis-
trict of California.

O. K.—CLYDE R. MOODY, Asst. U. S. Atty.
[8]

[Endorsed]: No. 1098. In the United States Dis-
trict Court, Southern District of California, South-
ern Division. United States of America, Plaintiff.
vs. James B. Simpson, Indicted as James B. Miller,
Defendant. Citation on Writ of Error. Received
Copy of within Citation this 15th day of December,
1916. Clyde R. Moody, Asst. U. S. Atty., Attorney
for Plaintiff. Filed Dec. 15, 1916. Wm. M. Van
Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.
[9]

*In the District Court of the United States, in and
for the Southern District of California, South-
ern Division.*

No. 1098—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant. [10]

Indictment.

In the District Court of the United States in and for the Southern District of California, Southern Division.

At a stated term of said court, begun and holden at the city of Los Angeles, county of Los Angeles, within and for the Southern Division of the Southern District of California, on the second Monday of January, in the year of our Lord one thousand nine hundred and sixteen,—

The grand jurors of the United States of America, chosen, selected and sworn, within and for the Division and District aforesaid, on their oath present:

That James B. Miller, whose full and true name, other than as herein stated, is to the grand jurors unknown, heretofore, to wit, on or about the 26th day of November, in the year of our Lord one thousand nine hundred and fifteen, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, did knowingly unlawfully and wilfully persuade, induce and entice a certain woman, to wit, one Vida White *alias* Vida Rogers, whose full and true name, other than as herein stated, is to the grand jurors unknown, to go from one place to another in foreign commerce, that is to say, to go from the city of San Francisco, State of California, to the town of Tia Juana, in the Republic of Mexico, via the Southern Pacific Company Railroad, a common carrier, from the city of San Francisco to the city of San Diego, California, and via automobile stage, a common car-

rier, from the city of San Diego, California, to the town of Tia Juana, Mexico, for a certain immoral purpose, to wit, for the purpose of placing said Vida White *alias* Vida Rogers in a house of prostitution and having her remain therein, in said town of Tia Juana, Mexico.

Contrary to the form of the Statutes of the United [11] States in such case made and provided, and against the peace and dignity of the said United States.

SECOND COUNT.

And the grand jurors aforesaid, on their oath aforesaid, do further present:

That James B. Miller, whose full and true name, other than as herein stated, is to the grand jurors unknown, heretofore, to wit, on or about the 26th day of November, in the year of our Lord one thousand nine hundred and fifteen, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, did knowingly, unlawfully and wilfully persuade, induce and entice a certain woman, to wit, one Vida White, *alias* Vida Rogers, whose full and true name, other than as herein stated, is to the grand jurors unknown, to go from one place to another in foreign commerce, that is to say, to go from the city of San Francisco, State of California, to the town of Tia Juana, in the Republic of Mexico, via the Southern Pacific Company Railroad, a common carrier, from the said city of San Francisco to the city of San Diego, California, and via automobile stage, a common carrier, from the city of San Diego, California,

to the town of Tia Juana, Mexico, for a certain immoral purpose, to wit, for the purpose of having said Vida White *alias* Vida Rogers, manage a house of prostitution and conduct a place where persons of opposite sexes meet and have illicit sexual intercourse.

Contrary to the form of the Statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

ALBERT SCHOONOVER,

United States Attorney.

ROBERT O'CONNOR,

Assistant U. S. Attorney. [12]

[Endorsed]: Bond \$2,500. No. 1098 — Cr. United States District Court, Southern District of California. The United States of America, vs. James B. Miller. True name, Jas. B. Simpson. Indictment for Viol. Act. June 25, 1910. Transporting female in foreign commerce for immoral purpose. A True Bill. S. J. Brown, Foreman. Presented and filed in open court, this 25th day of April, A. D. 1916. Wm. M. Van Dyke, Clerk. By T. F. Green, Deputy Clerk. Albert Schoonover, United States Attorney. [13]

At a stated term, to wit, the January term, A. D. 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the eighth day of May, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 1098—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

JAMES B. MILLER,
Defendant.

Arraignment and Plea of Defendant.

This cause coming on this day for the arraignment of defendant and for the entry of his plea; Robert O'Connor, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendant being present on bail, with his counsel, James E. Wadham, Esq., and defendant having been called and arraigned, having stated that his true name is James B. Simpson, having waived the reading of the indictment, and, on being required to plead to said indictment, defendant having pleaded not guilty as charged therein, which plea is now by order of the Court entered herein; it is thereupon ordered that this cause be, and the same hereby is continued

for the setting of the same down for trial before the Court and a jury to be impaneled until the call of the General Trial Calendar for the July term, A. D. 1916, of this court. [14]

At a stated term, to wit, the July term, A. D. 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the eighteenth day of September, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable EDWARD E. CUSHMAN, District Judge.

No. 1098—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

**Order Substituting Attorneys, Withdrawing Plea
of Not Guilty and Allowing Demurrer to
Indictment.**

Robert O'Connor, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendant being present on bail; now, on motion of Alfred F. McDonald, Esq., it is ordered that said Alfred F. McDonald, Esq., be and he hereby is substituted in the place and stead of James E. Wadham, Esq., as

counsel for defendant; whereupon, on motion of Alfred F. McDonald, Esq., of counsel for defendant, and with the consent of Robert O'Connor, Esq., Assistant U. S. Attorney, of counsel for the United States, it is ordered that defendant's plea of not guilty be, and same hereby is withdrawn, with leave to defendant to serve and file a demurrer to the indictment herein within five (5) days, this cause, however, to remain set down for trial before the Court and a jury to be impaneled upon the day heretofore fixed for the same by order of the Court, to wit, on November 21st, 1916, at 10 o'clock A. M. [15]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. MILLER,

Defendant.

Demurrer to Indictment.

Comes now the defendant, James B. Miller, and demurs to the indictment herein on the following grounds:

I.

That said indictment does not, nor does any count or paragraph thereof, state facts sufficient to constitute a punishable offense, or any offense or crime against the laws or statutes of the United States of America.

II.

That the first count in said indictment contained does not state facts sufficient to constitute a punishable offense, or any offense or crime against the laws or statutes of the United States of America.

III.

That the second count in said indictment contained does not state facts sufficient to constitute a punishable offense, or any offense or crime against the laws or statutes of the United States of America.

IV.

That said indictment and each of the counts therein contained does not substantially conform to, or comply with, the requirements of section 950 of the Penal Code of the State [16] of California, the State of which this court is holden.

V.

That said indictment and each of the counts therein contained does not substantially conform to, or comply with the requirements of section 951 of said Penal Code.

VI.

That said indictment and each of the counts therein contained does not substantially conform to, or comply with the requirements of section 952 of said Penal Code.

VII.

That said indictment and each of the counts therein contained is not direct or certain as respects the particular circumstances of the offense attempted to be charged, and that said circumstances are neces-

sary to be alleged in order to constitute a complete offense.

That said indictment and each of the counts therein contained is not direct or certain sufficiently to inform the defendant of the particular circumstance of the offense with which he is attempted to be charged.

That said uncertainty consists in the following matters:

That it is not alleged in said indictment or in either the first count or the second count therein contained, that the said defendant did knowingly, unlawfully, wilfully, persuade, induce and entice a certain woman to go from one place to another in foreign commerce for any immoral purpose which involves, constitutes, or creates any sexual immorality within the purview of the statutes mentioned in said indictment or for the purpose of prostitution, debauchery or other immoral purpose of the same sort or kind.

That it is not alleged in said indictment or in either the first count or the second count therein contained, that the [17] said defendant did knowingly, unlawfully and wilfully persuade, induce and entice a certain woman to go from one place to another in foreign commerce, with the intent and purpose on the part of the defendant that such woman should, or would engage in the practice of prostitution or debauchery or any other immoral practice of the same sort or kind.

That it is not alleged in said indictment or in either the first count or the second count therein

contained, that the woman mentioned therein was persuaded, induced or enticed to go from one place to another in foreign commerce for any purpose, either immoral or otherwise, or that said woman did commit any immoral act within the purview of the statute.

That it is not alleged in said indictment or in either the first count or the second count therein contained, that any of the alleged immoral acts or purposes attempted to be set forth therein as purposes for which the said woman was enticed, persuaded and induced to go from one place to another in foreign commerce, were, by the defendant intended, or would, under any circumstances, conduce, contribute or lead to, or be, sexual immorality, prostitution, debauchery or other acts or practices of the same kind, or that the acts of the defendant were by him calculated, or would have led or caused said woman to commit immoral acts, or engage in immoral practices of the same sort or kind.

That said indictment and each of the counts therein contained, is further uncertain and insufficient in that it can not be ascertained therefrom, how, or in what manner, or by what means, or by reason of what facts, the acts of the defendant set forth and alleged as his purposes in causing said woman to go from one place to another in foreign commerce, were, by said defendant calculated to, or would have constituted an immoral practice within the purview and meaning of the statute. [18]

Also, in that it can not be ascertained from said indictment, whether the purpose of the defendant

was to place said woman in said house of prostitution for the purpose of practicing prostitution or debauchery, or for the purpose of inducing or influencing her to give herself up to sexual immorality, by placing her in an environment where such existed, and if the latter, it is not alleged in said indictment, or either in the first or second count thereof, that said conditions or environment existed, or that said woman would thereby be placed among influences that would *would* have, eventually and naturally lead up to a course of immorality, sexually.

VIII.

That said indictment, and the first and the second count therein contained, is uncertain and insufficient, in that the specific acts of the defendant therein set forth are not alleged to have, by him intended to, or would have conduced to, caused or lead up to any of the immoral practices on the part of said woman, prohibited by the statute.

And further, in that it is not alleged or charged that the said woman was induced and persuaded to go from one place to another in foreign commerce for any purpose on her part, either moral, immoral or otherwise, nor either is it charged that the defendant so persuaded, induced and enticed said woman, with the intent on his part that she would practice prostitution, debauchery, or any other immoral practice of the same sort or nature, nor that the acts of the defendant would have, or could have, or were by him intended to have lead up to, contributed to, or caused said woman to engage in any im-

moral practice of the kind and nature set forth in the statute.

IX.

That the first count in said indictment contained is [19] uncertain and insufficient in that the alleged acts constituting the alleged purpose of the defendant in persuading, inducing and enticing said woman to go from one place to another in foreign commerce, do not specify that it was by said defendant intended, that said woman would engage in the practice of prostitution or debauchery, or any other practice of the same sort and nature, or any practice, either immoral or otherwise, and it is not alleged that the mere placing of said woman in a house of prostitution and having her remain therein, did lead, or contribute to, or cause said woman to engage in any immoral practice, nor that the environment or conditions under which said woman was placed in said house of prostitution were such that she would have, or was likely to have, eventually and naturally, been lead into a course of immorality sexually.

X.

That the second count in said indictment contained is uncertain and insufficient in that the alleged acts constituting the alleged purpose of the defendant in persuading, inducing and enticing said woman to go from one place to another in foreign commerce, do not specify that it was by said defendant intended, or that said woman would have engaged in the practice of prostitution, or debauchery, or any other immoral practice of the

same sort or nature, and it is not alleged that the management of a house of prostitution by said woman was by said defendant intended to have, or would have lead, contributed to or caused said woman to engage in any immoral practice contemplated by the statute, or that the environment or conditions under which said woman was by said defendant intended to manage and conduct said house of prostitution such, that she would have, or was likely to, or that said conditions tended to, eventually and naturally lead her into a course of immorality contemplated by the statute.

WHEREFORE, the defendant, James B. Miller, prays that this demurrer be sustained and that said indictment be dismissed.

ALFRED F. MacDONALD,
Attorney for Defendant. [20]

I, Alfred F. MacDonald, attorney for the defendant, James B. Miller, do hereby certify that the foregoing demurrer to Indictment No. 1098, pending in the District Court of the United States, Southern District of the State of California, Southern District, is interposed in good faith and not for the purposes of delay, or for any other purpose, except to present to the Court the matters of law therein contained, and which I honestly believe to be well taken and valid, legal objections to defects appearing on the face of said Indictment.

ALFRED F. MacDONALD,
Attorney for the Defendant.

[Endorsed]: Original. No. 1098. In the District Court of the United States, Southern *Division*

of California, Southern Division. United States of America, Plaintiff, vs. James B. Miller, Defendant. Demurrer to Indictment. Received Copy of the within Demurrer to Indictment this 22d day of September, 1916. Albert Schoonover, United States District Attorney. By Robert O'Connor, C. A. T. Filed Sep. 23, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. Alfred F. MacDonald, 600 Bryson Block, Los Angeles, California, 10985, Phones M. 985, Attorney for the Defendant. [21]

At a stated term, to wit, the July Term, A.D., 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the twenty-fifth day of September, in the year of our Lord one thousand nine hundred and sixteen. Present. The Honorable OSCAR A. TRIPPET, District Judge.

No. 1098—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JAMES B. SIMPSON, Indicted as JAMES B. MILLER,

Defendant.

Order Overruling Demurrer.

This cause coming on this day to heard on defendant's demurrer to the indictment; Robert O'Connor, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; Alfred F. MacDonald, Esq., appearing as counsel for defendant; and said demurrer having been argued, in support thereof, by Alfred F. MacDonald, Esq., of counsel for defendant, it is thereupon by the court ordered that defendant's demurrer to the indictment be, and the same hereby is overruled, to which ruling of the Court, on motion of said counsel for defendant and by direction of the Court, exceptions are hereby noted herein on behalf of said defendant. [22]

At a stated term, to wit, the July term, A.D., 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Tuesday, the twenty-first day of November, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable OSCAR A. Trippet, District Judge.

No. 1098—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JAMES B. SIMPSON, Indicted as JAMES B. MILLER,

Defendant.

Minutes of the Trial—November 21, 1916.

This cause coming on this day to be tried before the Court and a jury to be impanelled; Clyde R. Moody, Esq., and Robert O'Connor, Esq., Assistant U. S. District Attorneys, appearing as counsel for the United States; defendant being present on bail, with his counsel, Alfred F. MacDonald, Esq.; W. C. Wren being present as shorthand reporter of the testimony and proceedings, and acting as such; and both sides having answered ready; now, on motion of Alfred F. MacDonald, Esq., of counsel for defendant, it is ordered that Jud R. Rush, Esq., who is present in Court, be, and he hereby is associated with said Alfred F. MacDonald, Esq., as counsel for defendant; and it is further ordered, pursuant to the stipulation in open court of counsel for the respective parties, that exceptions to all rulings of the Court during the trial shall be deemed to have been asked for and noted on behalf of the party against whom each particular ruling shall have been made; and the Court having ordered that the trial proceed, and that a jury be impanelled herein; and the following twelve (12) petit jurors having been duly drawn, called and sworn on voir dire, to wit: Wm. Chislett, A. G. Munn, Willis P. Smith, Jos. [23] A. Anker, Wm. L. Barrowman, M. L. Rossiter, L. T. Bradford, Philo L. Lindley, W. B. Brown, A. R. Townsend, C. A. Henderson and Geo. B. Wilson; and said jurors having been examined by the Court and by counsel for the Government and by counsel for defendant and passed for cause; and Wm. L. Barrowman hav-

ing been challenged peremptorily by the Government and excused; and L. C. Turner, a petit juror, having been duly drawn, called, sworn on voir dire, examined by the Court and by counsel for the Government and by counsel for defendant and passed for cause; and the twelve jurors now in the box having been accepted by counsel for the Government and by counsel for defendant and duly sworn as the jury to try this cause, said jury as so impanelled and sworn consisting of the following named jurors, to wit:

JURY:

- | | |
|---------------------|----------------------|
| 1. Wm. Chislett, | 7. L. T. Bradford, |
| 2. A. G. Munn, | 8. Philo L. Lindley, |
| 3. Willis P. Smith, | 9. W. B. Brown, |
| 4. Jos. A. Anker, | 10. A. R. Townsend, |
| 5. L. C. Turner, | 11. C. A. Henderson, |
| 6. M. L. Rossiter, | 12. Geo. B. Wilson. |

And the indictment having been read to the jury and defendant's plea of not guilty having been announced to the jury by the clerk; now, on motion of Alfred F. MacDonald, Esq., of counsel for the defendant, and with the consent of Government's counsel, it is ordered that all of the witnesses herein, except Dave Gershon, a Government witness, be excluded from the courtroom during this trial, except when actually upon the witness stand for the purpose of testifying; and Clyde R. Moody, Esq., Assistant U. S. Attorney, of counsel for the United States, having made a statment to the jury of what the Government expects to prove; and Louise Bordeau, Dave Gershon and Ernest Estudillo having respec-

tively been called and sworn as witnesses on behalf of the [24] United States and having given their testimony; and the Court having admonished the jury that, during the progress of this trial, they are not to permit other persons to speak to them, nor themselves speak to other persons about this case or anything connected with this case, and that, until said case is finally given them under the instructions of the Court, for consideration, they are not to speak to each other about this case, or anything connected therewith; and Court, at the hour of 11:20 o'clock A. M., having taken a recess for 11 minutes; and now, at the hour of 11:31 o'clock, A. M., court having reconvened; and counsel, defendant and shorthand reporter being present as before; and counsel for the respective parties having stipulated that the jury are present, and all of said jurors being present, in court; and Charles H. Cousing, H. M. Stanley and Julian E. Cliff having respectively been called and sworn as witnesses on behalf of the United States, and having given their testimony; and the court having given the jury the usual admonition; and having excused said jurors until the hour of 2 o'clock P. M., of this day; and Court, at the hour of 11:52 o'clock A. M., having taken a recess until the hour of 2 o'clock P. M., of this day;

And now, at the hour of 2 o'clock P. M., Court having reconvened; and defendant, counsel and short-hand reporter being present as before; and counsel for the respective parties having stipulated that the jury are present, and all of said jurors being present in court; and Arthur Wm. Mosedale and F.

A. Bennett having respectively been called and sworn as witnesses on behalf of the United States, and having given their testimony; and in connection with the testimony of the last named witness, the Government having offered an exhibit, which is admitted in evidence in its behalf, to wit, Pl. Ex. 1. Card for telegraph charge account; and, also in connection with the testimony of said last-named witness, the Government having offered for identification certain exhibits, which are for identification marked with certain exhibit designations, [25] to wit, Plf. Ex. 2, office copy of a telegram received by telephone; Pl. Ex. 3, carbon copy bill to J. B. Miller; and Pl. Ex. 4, "Cash rec'd" sheet; and the Court having given the jury the usual admonition, and having, at the hour of 2:37 o'clock P. M., excused the jurors from the courtroom temporarily; and a question of the admissibility of certain evidence having been argued by counsel for the respective parties; and the jury, at the hour of 2:58 o'clock P. M., having been recalled into court; and counsel for respective parties having stipulated that the jury are present, and all of said jurors being present in court; and the Court having given the jury the usual admonition; it is, at the hour of 3 o'clock P. M., ordered that this cause be, and the same hereby is continued until Wednesday, the 22d day of November, 1916, at 10 o'clock A. M., for further trial, until which time the jurors are excused. [26]

At a stated term, to wit, the July term, A. D. 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Wednesday, the twenty-second day of November, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 1098—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

Minutes of the Trial—November 22, 1916.

This cause coming on this day to be further tried before the Court and a jury heretofore impaneled herein; Clyde R. Moody, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; Alfred F. MacDonald, Esq., and Jud R. Rush, Esq., appearing as counsel for defendant; who is present in court on bail; W. C. Wren being present as shorthand reporter of the testimony and proceedings, and acting as such; and the roll of the jury having been called, and all being present; and Myrl Stoezel having been called and sworn as a witness on behalf of the United States, and having given

testimony; and in connection with the testimony of said witness, the Government having offered for identification an exhibit, which is for identification marked with certain exhibit designations, to wit, Pl. Ex. 5, Western Union telegram to Mrs. Vida White; and Etta Naylor having been called and sworn as a witness on behalf of the United States, and, in connection with the testimony of said witness, the United States having offered two exhibits, heretofore offered and marked for identification, which are admitted in evidence in its behalf, to wit, Pl. Ex. 3 and Pl. Ex. 4; and Louise Bordeau and F. A. [27] Bennett, witnesses on behalf of the United States, having respectively been recalled for further examination, and having given their testimony; and, in connection with the testimony of said last-named witness, the Government having offered for identification an exhibit, which is for identification marked with certain exhibit designations, to wit, Pl. Ex. 6, Western Union message, received Nov. 26, 1914; and the jury having been given the usual admonition by the Court; and Court thereupon, at the hour of 10:42 o'clock A. M., having taken a recess for 33 minutes; and now, at the hour of 11:15 o'clock A. M., court having reconvened; and defendant, counsel and shorthand reporter being present as such; and counsel for the respective parties having stipulated that the jury are present, and all of said jurors being present in court; and F. A. Bennett, a witness on behalf of the United States, having again taken the stand for further examination, and having given his testi-

mony; and, in connection with the testimony of said witness, the Government having offered for identification an exhibit, which is for identification marked with certain exhibit designations, to wit, Pl. Ex. 7, delivery sheet of telegram; and the Government having also offered two exhibits heretofore marked for identification, to wit, Pl. Ex. 2 and Pl. Ex. 5, which offer is refused and said exhibits not admitted in evidence; and the Government having rested; and Jud R. Rush, Esq., of counsel for defendant, having, on behalf of said defendant, moved the Court to instruct the jury to return a verdict of not guilty in this cause; it is by the Court ordered that defendant's said motion for an instructed and directed verdict of not guilty herein be, and the same hereby is denied; and defendant having rested; and the testimony being closed; and this cause having been argued to the jury, on behalf of the Government, by Clyde R. Moody, Esq., Assistant U. S. Attorney, of counsel for the United States, and on behalf of defendant by Jud R. Rush, Esq., [28] of counsel for defendant, and on behalf of the Government in reply by Clyde R. Moody, Esq., Assistant U. S. Attorney, of counsel for the United States; and the argument being concluded; and the Court having given the jury the usual admonition; and Court thereupon, at the hour of 11:50 o'clock A. M., having taken a recess until the hour of 2 o'clock P. M. of this day, until which hour the jurors are excused;

And now, at the hour of 2 o'clock P. M., Court having reconvened; and defendant, counsel and shorthand reporter being present as before; and the

roll of the jury having been called, and all being present; and the Court having read its written instructions to the jury; it is, on motion of defendant's counsel ordered that exceptions be,, and hereby are noted herein on behalf of said defendant to the refusal of the Court to give such of the instructions requested by defendant as the Court did refuse to give, and also to each and every of the instructions given by the Court; and Josiah W. Bell, a Deputy U. S. Marshal, having been duly sworn to take charge of the jury; and the jury, at the hour of 2:20 o'clock P. M., having retired in charge of said sworn officer; and, at the hour of 2:30 o'clock P. M., the Honorable Oscar A. Trippet, District Judge, having left the bench to await the incoming of the jury; and now, at the hour of 4:42 o'clock P. M., court having reconvened; and the jury having come into court; Clyde R. Moody, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendant being present on bail, with his counsel, Alfred F. MacDonald, Esq.; and the shorthand reporter being present as before; and counsel for the respective parties having stipulated that the jury are present, and all of said jurors being present in court; and the jurors having been asked if they have agreed upon a verdict, and having by their foreman replied that they have not so agreed; and the jury having asked for additional instructions; and the Court [29] having given the jury additional instructions; and the indictment in this cause having been again read to the jury; and the jury at the hour of 5:02 o'clock P. M., having again retired in charge of said

sworn officer; and thereupon the Honorable Oscar A. Trippet, District Judge, having left the bench to await the incoming of the jury; and now, the jury having come into court, at the hour of 5:02 o'clock P. M.; Clyde R. Moody, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendant being present on bail, with his counsel, Alfred F. MacDonald, Esq.; and the shorthand reporter being present as before; and counsel for the respective parties having stipulated that the jury are present, and all of said jurors being present in court; and the jurors having been asked if they have agreed upon a verdict, and having by their foreman replied that they have so agreed, and having been required to present their verdict, and their verdict having been read by the clerk; now, by direction of the Court, said verdict is filed and recorded by the clerk, said verdict as so recorded being as follows, to wit:

“In the District Court of the United States in and for the Southern District of California, Southern Division.

No. 1098—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,
Defendant.

We, the jury in the above-entitled cause find the defendant James B. Simpson, indicted as James B. Miller, not guilty as charged in the first count of the indictment, and guilty as charged in the second count of the indictment, with recommendation for leniency.

Los Angeles, California, November 22, 1916.

L. T. BRADFORD,
Foreman."

And said verdict having been read to the jury as so recorded, and the jurors having said that it is their verdict; it is now by the [30] Court ordered that said jurors be, and they hereby are excused from further attendance upon the Court until Tuesday, the 28th day of November, 1916, at 10 o'clock A. M.; and it is further ordered, on motion of counsel for defendant, that this cause be, and the same hereby is continued for the sentence of defendant until Monday, the 27th day of November, 1916, at 10 o'clock A. M., and that in the meantime defendant remain at large upon his present bail bond. [31]

*In the District Court of the United States, in and
for the Southern District of California, South-
ern Division.*

No. 1098—CRIM. S. D.

THE UNITED STATES OF AMERICA,

Plaintiffs,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

Verdict.

We, the jury in the above-entitled cause find the defendant James B. Simpson, indicted as James B. Miller, Not Guilty as charged in the first count of the Indictment, and Guilty as charged in the second count of the Indictment, with recommendation for leniency.

Los Angeles, California, November 22, 1916.

L. T. BRADFORD,

Foreman.

[Endorsed]: No. 1098. U. S. District Court, Southern District of California, Southern Division. United States vs. James B. Simpson, Indicted as Jas. B. *Simpson*. Verdict. Filed Nov. 22, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [32]

At a stated term, to wit, the July term, A. D. 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Monday, the fourth day of December, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 1098—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

Minutes of the Trial—December 4, 1916.

This cause coming on at this time to be heard on defendant's motion for a new trial, and also coming on for the sentence of defendant; Clyde R. Moody, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendant being present on bail, with his counsel, Jud R. Rush, Esq., and Alfred F. MacDonald, Esq., and said motion for a new trial having been argued, in support thereof, by Alfred F. MacDonald, Esq., and Jud R. Rush, Esq., of counsel for defendant, and in opposition thereto by Clyde R. Moody, Esq., Assistant U. S. Attorney, of counsel for the United States; it is by the Court ordered that said motion for a new trial be, and the same hereby is denied, to which ruling of the Court, on motion of defendant and by direction of Court, exceptions are hereby noted herein on behalf of said defendant; and it is further ordered, on motion of defendant, by his said counsel that exceptions be, and hereby are noted herein on behalf of said defendant to the last instruction given the jury by the Court on the trial of this cause, to wit, the instruction given the jury at their request after the cause had been sub-

mitted to said jury; and a motion of defendant in arrest of judgment having been [33] filed herein and presented to the Court, it is ordered that said motion in arrest of judgment be, and the same hereby is denied; and statements in mitigation of sentence having been made by Alfred F. MacDonald, Esq., of counsel for defendant; it is ordered that this cause be, and the same hereby is continued for the sentence of defendant until Monday, the 11th day of December, 1916, at 2 o'clock P. M. [34]

At a stated term, to wit, the July term, A. D. 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the courtroom thereof, in the city of Los Angeles, on Tuesday, the twelfth day of December, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 1098—CRIM. S. D.

THE UNITED STATES OF AMERICA,
Plaintiffs,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

Minutes of the Trial—December 12, 1916.

This cause coming on at this time for the sentence of defendant; Clyde R. Moody, Esq., Assistant U. S.

Attorney, appearing as counsel for the United States; defendant being present on bail, with his counsel, Alfred F. MacDonald, Esq., the Court thereupon pronounces sentence upon said defendant for the offense of which he now stands convicted, namely, the offense of transporting female in foreign commerce for immoral purpose, as follows, to wit: The judgment of the Court is, that the defendant, James B. Simpson, indicted as James B. Miller, be imprisoned in the United States Penitentiary at McNeil Island, State of Washington, for the term of one (1) year and one (1) day, and that he pay a fine of one thousand (1,000) dollars, to which sentence, on motion of defendant and by direction of the Court, exceptions are hereby noted herein on behalf of said defendant. Defendant is remanded to the custody of the U. S. Marshal. [35]

*In the District Court of the United States, Southern
District of California, Southern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

Bill of Exceptions of Defendant.

Be it remembered that heretofore, to wit, on the 25th day of April, 1916, the grand jury of the United States in and for the Southern District of California, Southern Division, did find and return into the

above-entitled court its indictment against the defendant, James B. Simpson, sometimes otherwise known as James B. Miller, for violation of Section 3 of the "Mann White Slave Traffic Act," and thereafter on the 8th day of May, 1916, the said James B. Miller appeared in said court and was duly arraigned upon the said indictment, and entered his plea of "not guilty" thereto, and thereafter, upon the 18th day of September, 1916, upon motion of counsel for said defendant, and with the consent of counsel for plaintiff, and upon order of the above-entitled court duly made and entered, the said plea of "not guilty" was withdrawn, and leave granted to the defendant to file a demurrer to said indictment, and thereafter, upon the 23d day of September, 1916, said defendant filed in said court his demurrer to said indictment, and thereafter, on the 25th day of September, 1916, said demurrer was duly heard by the said Court; which duly and regularly made its order overruling said demurrer; to which order of the Court then and there made, overruling the demurrer of said defendant, the said defendant took [36] an exception, which exception was then and there duly and regularly allowed and entered by the Court.

That thereafter, upon the 21st day of November, 1916, said cause came on duly and regularly for trial, the Government being represented by Clyde R. Moody, Esq., Assistant United States District Attorney for the Southern District of California, and the defendant being represented by Alfred F. Mac-

Donald, Esq., and Jud R. Rush, Esq., of the firm of Davis & Rush.

Thereupon a jury to try the cause was duly and regularly impaneled, and the following proceedings took place on and during the trial, to wit:

Opening Statement on Behalf of the Prosecution.

By Mr. MOODY.—If the Court please, and gentlemen of the jury: In this case the United States expects to prove that the defendant who now gives his name as James B. Simpson, but who was indicted as James B. Miller, owned or leased certain property in the city of Tia Juana, and that he built on that property, or caused to be built, a house comprising some eighteen or twenty rooms, and which he intended to use and did use as a house of prostitution; that he was acquainted with a woman at the time he built this house in Tia Juana, by the name of Vida Rogers, or Vida White; that Vida White at that time was residing in San Francisco. That about the time that he finished his house in Tia Juana he sent a telegram to Vida White, asking that she come down to Tia Juana and take charge of the house that he had built there, and that he would split fifty-fifty with her; and that subsequently to that he wired her again, urging her to come immediately and take charge of the house; and that she did go from the city of San Francisco to the city of Tia Juana, in Mexico, and that she did there take charge of this house, which he had built, and which was used as a house of prostitution, and that she became the mistress or the landlady of this house of prostitution in Tia Juana, which was owned and

[37] run by this defendant, James B. Simpson. And under the evidence which we will introduce, and the instructions of the Court, we will then expect a verdict of guilty at your hands.

Testimony of Louise Bordeau, for the Government.

LOUISE BORDEAU, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

Direct Examination.

My name is Louise Bordeau. I live at the James Apartments in this city. In the fall of 1915, I lived in San Francisco. Lived there about seven months. I knew a woman in San Francisco by the name of Vida Rogers; she also went by the name of Vida White. I met her in a house of prostitution at 43 Washington Alley. I was engaged in prostitution at this house at Washington Alley. She was the housekeeper at the place. This was about July, 1915. The day after Thanksgiving, in November, 1915, she left 43 Washington Alley and I left with her. At the time she was housekeeper at 43 Washington Alley, she also had a residence at the Berkeley Hotel. Vida Rogers received two telegrams about the time she and I left San Francisco.

Q. I will exhibit to you a telegram, which I will call United States Exhibit 1 for identification, and I will ask you if that is the wording of the telegram that you say that this woman received?

Mr. RUSH.—Just a moment. I object to that question as incompetent, irrelevant and immaterial.

(Testimony of Louise Bordeaux.)

The COURT.—I think the “wording,” Mr. Moody—if that is the telegram—

Mr. MOODY.—Your Honor, it is impossible to produce the typewritten telegram which is delivered to a woman, but the telegram which is filed, and which can subsequently be proven to have been filed,—if this woman can testify that that is the same wording that she saw at that time, then it would be a sufficient connection of the telegram. [38]

The COURT.—If you want to introduce a copy, you will have to show that you cannot produce the original.

Mr. MOODY.—This is the original; this is not a copy. This is the one which was filed for record, and which was sent, which was filed in San Diego. This is not a copy.

Mr. RUSH.—I want to add to my objection the further ground that it calls for hearsay.

The COURT.—Now, do you propose to prove that you cannot get the copy, or the original, whichever it may be designated?

Mr. MOODY.—I propose to show that the woman, Vida Rogers, is without the jurisdiction of this court.

The COURT.—And that she has got that telegram?

Mr. MOODY.—That is impossible for us to say. The last time we had any information about it, she had it. But she is now without the jurisdiction of the court, and the process of this Court will not reach her.

(Testimony of Louise Bordeau.)

The COURT.—You are going to prove that?

Mr. MOODY.—I will prove that by this witness.

The COURT.—I think you better prove that first, Mr. Moody.

Mr. MOODY.—Q. Do you know where Vida Rogers is at the present time?

A. I believe she in Tia Juana.

Q. When did you see her in Tia Juana last?

A. It was about in July, was the last time I was over there.

Q. And she was there at that time?

A. She was there at that time.

Q. Have you seen her since?

Mr. RUSH.—When was that?

Mr. MOODY.—In July of this year.

The COURT.—Q. July of this year you are speaking about? A. Yes. [39]

Mr. MOODY.—Q. Have you seen her since?

A. No, I have not.

Q. Have you seen her in the United States since last November? A. Oh, yes, sir.

Q. When was the last time you saw her in the United States?

A. Well, it was some time right after the floods; I don't remember just when.

Q. The last January floods? A. Yes.

Q. And since that time you have not seen her in the United States? A. No.

Mr. MOODY.—Now, if the Court desires at this time any further evidence on the whereabouts of the woman, Vida Rogers, I can produce such testimony

(Testimony of Louise Bordeaux.)

and withdraw this witness.

The COURT.—Well, I will not require you to withdraw her. Upon your representation that you expect to do it, I will permit the evidence, and I will strike it out if you fail to produce the evidence.

Mr. RUSH.—Your Honor, before your Honor rules will you permit me to just suggest one matter, and that is this: I do it because I don't think your Honor apprehends the point of my objection. Before it can be shown that a telegram was received in San Francisco by this woman, or by anyone, it must be shown a telegram was sent, and before it can be proven that the telegram was sent, it must be proven it was sent by this defendant. So to show this woman a writing, or what purports to be a copy—not the thing that she saw there, but something containing the same language that she saw there—and ask her to refresh her memory from that, and say that that is the same language that was in the telegram that she saw in San Francisco, in any event [40] would not be competent. She can only refresh her recollection from memoranda that she made herself. She cannot refresh her recollection from memoranda made by some one else, and which she, herself, did not see made, and never saw before this time. This, at the most, would be simply a memorandum of what the operator in the town from which it was sent, sent, and is not the identical object that she saw.

The COURT.—Isn't that so, Mr. Moody, that she can only refresh her memory and testify—she has

(Testimony of Louise Bordeaux.)

either got to testify from memory, or from memoranda which she made herself?

Mr. MOODY.—The reason why I didn't ask her was because I did not desire that this woman should testify what was in the telegram that she saw in San Francisco—which she can testify from memory after it is shown that the telegram, or the party in whose custody it was, is now without the jurisdiction of the court—until after this telegram had been introduced in evidence; and I was only attempting at this time to present this telegram in the record for the purpose of identification by this witness. If the Court desires, I can ask her what was in that telegram.

The COURT.—I think you better proceed that way, from her own memory.

Mr. MOODY.—Q. You say this woman received a telegram in San Francisco just prior to the time that you and she left there; is that right?

A. Yes, sir.

Q. Do you remember about what date it was that she received the telegram?

A. No, sir, I couldn't tell you that, the day.

Q. Well, about how long was it before the day after Thanksgiving, the day upon which you said you left?

A. It must have been—oh, close onto three weeks.

Q. About three weeks before you left that she received this telegram? [41] A. Yes, sir.

Q. Do you recall at this time—do you recall whether or not Vida Rogers showed you the telegram and whether you read the telegram that she received,

(Testimony of Louise Bordeaux.)

the first one? A. Yes, sir.

Q. And do you recall at this time the substance of that telegram?

A. Well, perhaps not word for word.

Q. But do you recall the substance of it?

A. Yes, sir.

Q. What was the substance of it?

Mr. RUSH.—We object to that as incompetent, irrelevant and immaterial, and no proper foundation laid, and hearsay.

The COURT.—Well, on the promise of the United States Attorney that they will show that the recipient of the telegram is not in the jurisdiction of the Court, the objection will be overruled.

By the COURT.—Q. Now, did this woman keep the telegram after you saw it? Was it in her possession the last time you saw it?

A. Yes, your Honor.

Q. Well, answer the question.

Mr. RUSH.—We except to the ruling of the Court. I understand—the Court will pardon me if I inquire, in this court do we have to enter an exception to the ruling if we desire it, or does the rule that applies in the State court apply here now?

The COURT.—I do not think the rules apply, of the State court.

Mr. RUSH.—So that any time that we desire an exception to a ruling, we must enter our exception?

[42]

The COURT.—You can have a stipulation on that subject, if you desire it, to have an exception entered.

(Testimony of Louise Bordeau.)

Mr. RUSH.—Will you stipulate that any time we object, we need not enter an exception, but that the exception may be presumed to have been preserved and entered, without going through the necessity in each instance?

Mr. MOODY.—I will so stipulate—in order to expedite the case—I will stipulate an exception may be deemed taken to all rulings.

Q. Now, will you kindly state the wording of the contents of the telegram as you remember it?

A. It was about a house with a dance-hall, kitchen and bar and five rooms in connection. Looks like a good proposition. Will finance everything. Will split fifty-fifty.

Q. Who signed the telegram, if you know; or whose name was signed to the telegram, if you know?

A. Just "Jim."

Q. Do you know anyone who is called Jim?

A. Mr. Miller, Jim Miller.

Mr. RUSH.—We object to that as incompetent, irrelevant and immaterial. Doubtless a great *may* men are called Jim.

The COURT.—I think that is too general, Mr. Moody. The answer will be stricken out.

I know the defendant in this case. I see him in the courtroom. I first met him in San Francisco last summer, when I was working at 43 Washington Alley. Vida Rogers introduced me to him. I could not recall the number of times I saw him at Washington Alley. It was not a large number, perhaps three or four times in all the time that I was working

(Testimony of Louise Bordeau.)

there. Vida Rogers just introduced him to me as "Jim." She never made any statements to me in his presence as to who he was. I never [43] knew him under any other name than Jim. I knew him as Jim Miller. She just introduced me as Jim, but she spoke about him as Jim Miller. The next place I saw the defendant was in Tia Juana.

Q. Before you went to Tia Juana, did Vida Rogers receive any other telegram, if you know?

A. She received one other.

Q. About how long after the first one came.

A. It must have been two weeks after the first one came.

Q. And how long before she left San Francisco?

A. Just a very few days.

Q. Did you see that telegram? A. Yes, sir.

Q. Did you read it? A. Yes, sir.

Q. Do you recall at this time what that telegram said? A. Yes, sir.

Q. What did it say?

Mr. RUSH.—We object to that on the ground it is incompetent, irrelevant and immaterial, no proper foundation laid, not the best evidence, and calls for hearsay.

The COURT.—Q. Was this the last time you saw it, in the possession of this woman, Vida Rogers?

A. Yes, sir.

The COURT.—And you expect to show that you cannot produce the telegram, in the manner you have heretofore stated concerning the other telegram?

Mr. MOODY.—In the same manner, your Honor.

(Testimony of Louise Bordeaux.)

The COURT.—The objection will be overruled.

Mr. MOODY.—Q. What did that telegram say, as near as you can recall at this time?

A. That everything ready. Leave Thursday or Friday, I [44] believe it was.

Q. Do you remember by whom it was signed?

A. "Jim."

I don't think I remember this telegram as well as I do the other one; I did not see it as well. She showed me the telegram, though, but the first one, I saw it three or four different times. Vida Rogers had the second telegram after I saw it. I didn't see it more than once, that being the time I looked at it.

I left San Francisco in company with Vida Rogers the first day after Thanksgiving, 1915, and went to Tia Juana. I went in company with Vida Rogers, by train to San Diego, and I went by myself from San Diego to Tia Juana. I laid over in San Diego a day. When I reached Tia Juana, I went to the Palace, which is a dance-hall and house of prostitution. I saw Vida Rogers in the Palace, also Miller, the defendant. I remained there from November up until after the flood. Vida Rogers was running the place, she was the landlady. When the house was first new, when I first went over there, I used to see Jim Miller, the defendant, there quite often. He stayed there three or four instances that I recall. When he was there, he ate at the restaurant for the girls connected with the Palace. He ate there quite often. I don't recall any particular statements that he made around the house. I don't know positively

(Testimony of Louise Bordeau.)

who owned the Palace. I heard Miller make statements that he owned it.

By the COURT.—Q. How many girls were in that house?

A. At one time there were 22 girls in the house.

Q. How many rooms for girls to entertain company?

A. I believe there were four rooms in the house, and then an extra house that had 22 rooms in it.

Q. How far was this extra house away?

A. Right next door to the place.

Q. Did Vida Rogers have anything to do with that? [45]

A. It was connected with the Palace; it was just rooms.

Q. Were all those girls engaged in prostitution?

A. Yes, sir.

At one time there were twenty-two girls in the house. I believe there were four rooms in the house, and then an extra house that had twenty-two rooms in it. The extra house was right next door to the place. All the girls were engaged in prostitution and most of them were Americans. I traveled to Tia Juana from San Diego by stage.

Cross-examination.

Vida Rogers received the first telegram about three weeks before we left San Francisco. She came down to San Diego once before, right after she got this first telegram, and was gone a few days and then came back to San Francisco. She showed the telegram to all of the girls. I have talked with the

(Testimony of Louise Bordeaux.)

authorities in reference to the contents of a telegram received by Vida Rogers. I talked over with them what was in that telegram and they showed me the same telegram you have there. I told them before they got the telegram what was in it, and I was able to do this without refreshing my memory from this document that they showed me. Two or three days after Vida Rogers received the first telegram she went to San Diego. She stayed a couple of days and then came back. She received the other telegram just before we left. Vida Rogers was the landlady or housekeeper of this place in San Francisco. She is a woman between 35 and 40 years of age, in my opinion. I stayed in San Diego one night before I went to Tia Juana. I saw the house when I arrived in Tia Juana, and it had five rooms, kitchen and dance-hall. That was the only house that I saw there at that time. Later another house was built. I couldn't state how long after I went there, the other house was built. It was built in December. I don't remember what month it was finished. I engaged in prostitution in the house. I was required [46] to get a license to do that. Vida Rogers was required to get a license to run a house of that nature. I have seen her license; it was on the wall in the bar-room. The license was made to Vida Rogers. She also had a license to sell liquors and tobacco. I have seen them and they are in the name of Vida Rogers. The licenses were issued by the Mexican government. The Palace and Tia Juana are on the Mexican side of the line.

Testimony of Dave Gershon, for the Government.

DAVE GERSHON, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

Direct Examination.

My name is Dave Gershon, and I reside in San Diego. With the Bureau of Investigation, Department of Justice. I have been in Tia Juana within the last few days. About ten days ago. I know Vida Rogers. I saw her in the last few days at the Palace, in Tia Juana, Mexico. I have been trying to serve her on this side of the line for some time last past, possibly since last February or March, and have not been able to do so. I have not seen her on this side of the line.

Cross-examination.

I was trying to serve a subpoena on her in this case. I did not take any steps to prevent her coming across the line to the United States. I did not furnish the newspapers with any report that I had a warrant issued by Commissioner Hammack for her arrest and staked men all along the line, and that the moment she put her foot across the line, she would be arrested. I do not know who did furnish that information. I have not got a subpoena with me now. I was not trying to serve a subpoena on her. I was going to get a subpoena when I located her on this side. If she came over on this side, I was going to come up here, or send up here and get a subpoena to serve on her. I never had any conversation with her in regard to this case. I never in-

(Testimony of Dave Gershon.)

timated to [47] her that I wanted her to appear as a witness in this court in this case. I do not know whether she would have done so or not. It has been possibly ten days or two weeks ago since I saw her. She was then in Tia Juana. I never had any subpoena to serve on her.

Testimony of Ernest Estudillo, for the Government.

ERNEST ESTUDILLO, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

Direct Examination.

My name is Ernest Estudillo. I reside in San Diego. I resided in Tia Juana last November. I came back to San Diego about a month ago. I knew the defendant about the 29th of December. I went to work for him at that time. I did not know him previous to that time. I know a place in Tia Juana called the Palace. I know the landlady there; her name is Vida. I have known her since I went to work in the house. I knew the place before I went to work there. I was a policeman in Tia Juana and know that the Palace was a house of prostitution. I went to work in the house on the 29th of December. A representative of Mr. Miller hired me to go down there and work as a policeman at the Palace. Mr. Miller gave an order to a fellow by the name of Tony to pay me. I received my money in pursuance of that order. I don't know who Tony was. I didn't know him until I went into that house there. Tony, I guess, was a bartender in the Palace; he was act-

(Testimony of Ernest Estudillo.)

ing like a manager there, as far as I know. I saw Miller there a good many times.

Cross-examination.

I went to work at the Palace on the 29th day of December. The new building had been built. Before this the old building was a house of prostitution and contained a kitchen, dining-room, bar and five rooms. In Tia Juana, the one who runs a house of [48] prostitution must have a license. I didn't pay any attention to who had the license to run that house. Tony, the bartender, or the man who appeared to be the manager in the house, paid me my wages, but Mr. Miller gave the orders to pay men. He told me they would pay me more wages than I was getting at the Casino. He saw me over to the parlor house. The subprefecto sent me from the Casino over there in the first place. He told the cop over there to change with me, on account I could talk English. Each house has a man who is named by the subprefecto, and who is paid by the house, and I, working over in the Casino, was sent by the subprefecto down to this house, the Palace.

Q. The government has got nothing to do with the pay?

A. The government has got orders to send a man that they can depend on, but they got nothing to do with the pay; the house pays.

Q. Let's see if I am right. Each house has a man who is named by the subprefecto of the government, and who is paid by the house?

A. By the house, certainly.

(Testimony of Ernest Estudillo.)

Q. And you, working over in the Casino, were sent by the subprefecto down to this house, to the Palace? A. Yes.

Q. And you were paid when you were working in the Casino by the Casino, and paid when working in the Palace by Tony? A. I didn't catch that.

Q. When you worked at the Casino, the Casino paid you? A. Why, certainly.

Q. And when you worked in the Palace, Tony, who was the bartender and appeared to be the manager, paid you there? A. Yes.

**Testimony of Charles H. Cousins, for the
Government.**

CHARLES H. COUSINS, called as a witness on behalf of the prosecution, being first duly [49] sworn, testified as follows:

Direct Examination.

My name is Charles H. Cousins. I reside in San Diego. I am a carpenter and builder, and have been for 32 or 33 years. I know the defendant, Miller, and have known him about two years. I know where the Palace is in Tia Juana. I built it last year, a year ago, some time in the fall. Mr. Miller, this defendant, authorized me and hired me to build the Palace. He also paid me for building it. The place had eighteen or twenty rooms. There was a door to go from the old building into the other building. I do not know Vida Rogers or Vida White. I saw Louise Bordeau around the new place. I do not know who the proprietress of the place was. I built

(Testimony of Charles H. Cousins.)

both the new building and the old one. I built the old building for Mr. Savin, four or five months before I built the new building.

Testimony of H. M. Stanley, for the Government.

H. M. STANLEY, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

Direct Examination.

My name is H. M. Stanley. I am a police officer in San Diego. Have been about ten years. I know the Palace, in Tia Juana, and have known it since it opened about a year ago. I know the defendant J. B. Miller. I have seen him in Tia Juana. Saw him at the Hot Springs and at the Palace. I had a conversation with him about the Palace. Officer Whistler and myself went over there to investigate a couple of girls in the place and we met Mr. Miller. I asked him in regard to these girls, and he said, "I will see my landlady and she may give you this information." I believe her name was White. We consulted his landlady, in his presence, and at that time I said to him, "You might run up against a snag, Miller, running this place." And he said, "Well, I am in the clear; I don't run it, but my landlady runs it for me." The place is a house of prostitution. [50]

Cross-examination.

I testified in this matter before the commissioner in San Diego on the 8th day of March, this year. At that time, I testified as follows: "He said, 'I don't

(Testimony of H. M. Stanley.)

know whether this girl is in here or not; I will ask my landlady and she will be able to tell you. She does all the business for me.' I says, 'You want to watch out, Miller, or you will get in a jam with her running this place.' And he says, 'I am in the clear; I am not running it; my landlady is running it.' " I must have omitted "for me," because I am positive he said "for me." Mr. Miller was running the Hot Springs at that time. This conversation was held in January.

Testimony of Julian Eugene Cliff, for the Government.

JULIAN EUGENE CLIFF, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

Direct Examination.

My name is Julian Eugene Cliff. I reside in San Diego. In November, 1915, I was manager of the Victoria Apartments in San Diego, at 1069 10th St. I know this defendant, Mr. Miller. In November of 1915, he had an apartment there. He moved in about September 28th. He was there about the 1st of December. His apartment was number 31. He had a phone in his apartments. The house has what is known as a hotel system, and it may be connected with the exchange if the tenant pays extra for it. Mr. Miller had the house system phone, it was connected up with the exchange. It is the tenant's privilege to have the exchange connected up with his instrument that is in his room, and if it is, he gets a special number. The special connection was

(Testimony of Julian Eugene Cliff.)

made at either Mr. or Mrs. Miller's request. The number of the Victoria Apartments, the office phone was Main 3857. The number of the phone in his apartment was Main 6626. The bills were sent to the Victoria Apartments and I paid it and it was added to their [51] bill. I believe Mr. Miller paid his telephone bill during the time he occupied the apartment.

Cross-examination.

The defendant occupied a single apartment. His wife lived with him there. I have seen her here to-day.

Testimony of Arthur William Mosedale, for the Government.

ARTHUR WILLIAM MOSEDALE, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

My name is Arthur William Mosedale and I reside in San Diego. I am employed by the telephone company, and was so employed last October, 1915. On October 11, 1915, I installed a telephone in Apartment 31 of the Victoria Apartments. The number of the phone was Main 6626.

Testimony of F. A. Bennett, for the Government.

F. A. BENNETT, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

Direct Examination.

My name is F. A. Bennett. I am manager of the Western Union Telegraph Company at San Diego,

(Testimony of F. A. Bennett.)

California. Have been such since April 19, 1912. I know the defendant, Miller. He had a charge account with the company in San Diego. I have the card that he opened the charge account by. It is not customary to charge telegrams in the Western Union, unless a person has opened an account. The card is not signed by Mr. Miller. I wrote the card myself. I wrote the card at his request and in his presence. It is one of the regular records kept by my company regarding charge accounts.

Mr. MOODY.—I offer this as United States Exhibit No. 1.

Mr. RUSH.—We object to the introduction of the card on the ground it is hearsay and not the best evidence.

The COURT.—Objection overruled. [52]

**Plaintiff's Exhibit No. 1—Charge Card Issued to J.
B. Miller by Western Union Co.**

(Typewritten:)

Miller & Couden (Pencil:) J.B. Victoria Apts.,
10th & E St.

~~49 Camp, Exposition grounds.~~

~~Charge only messages signed by the following:~~

~~J. B. MILLER,~~

~~F. M. Couden,~~

F A B ~~Jas. O'Donnell.~~

May 24, 1915. File 6.

(Pencil:) Changed to J. B. Miller only.

Mr. Miller requested to open it in his name, that he was not in partnership with Mr. Couden any more. That date was some time in November, I

(Testimony of F. A. Bennett.)

don't remember the date. I cannot tell from the card. He gave his address as the Victoria Apartments. He did not give his telephone number, that I have any record or knowledge of. I first met him in the early part in 1915.

Q. I will show you a telegram, which I will call United States Exhibit 2 for Identification, and ask you if that is a part of the records kept in the due course of business in your office in San Diego.

A. This was a part of *your* office records, yes, sir,

Q. And what is that, without telling what is in it, what is it?

A. It is a telegram that has been received by telephone. Somebody phoned that in to be sent. In San Diego.

Q. Was it sent? A. Yes, sir.

Q. What was the date that it was sent?

A. It was filed November 15th, and sent November 16th. [53]

Q. Can you tell from that record what number the telegram was phoned from?

A. Yes.

Q. What was the number it was sent from?

Mr. RUSH.—I object to that unless the witness himself knows, it is hearsay. The record of the telegraph company in San Diego is not an official record of any court, and is not to be considered as such.

Mr. RUSH.—A question on the objection, on the voir dire?

Q. (By Mr. RUSH.) You said you know what telephone it was phoned from?

(Testimony of F. A. Bennett.)

A. No, I can say from the record, what the record shows, I have no personal knowledge of it, other than that record. I did not receive the telephone message myself. I know the name of the clerk that took it. I only know that from the marks on the instrument I hold in my hand. I have no personal knowledge whatever of how the message came into the office, who sent it into the office, by whom it was received in the office, or where it was received from, except the marks I find on it, and the marks were not made in my presence, or under my personal observation or direction.

Mr. MOODY.—Q. Mr. Bennett, in due course of business in your company, if a message is phoned in, tell the jury what procedure is taken, what record is kept of that?

A. We have a special blank for copying telegram received over the telephone. On those blanks we are required to show the date, the telephone number from which it was phoned; the originating point is shown, the destination is shown, and the telegram is transcribed upon that blank. All these things appear to have been done, in this instance, in the telegram I hold in my hand. That is a regular record, kept in the course of business of my company. I have in my possession a record showing a bill rendered to Mr. Miller in the month of [54] November, 1915. It is a carbon copy of the bill rendered to Mr. Miller for the month of November, 1915. I can refer to my daily cash receipts record and tell

(Testimony of F. A. Bennett.)

whether that bill was paid or not. I have that record with me.

Mr. MOODY.—I offer this as United States Exhibit No. 3 for Identification. (The paper was marked United States Exhibit No. 3 for Identification.)

Mr. MOODY.—The telegram was 2 for Identification. (The telegram was marked United States Exhibit No. 2 for Identification.)

By Mr. MOODY.—This is what, which you have handed me? A. A daily cash record.

Mr. MOODY.—This I offer as 4 for Identification. (The paper was marked United States Exhibit No. 4 for Identification.)

Q. (By Mr. MOODY.) Now, Mr. Bennett, I hand you United States Exhibits Nos. 2, 3 and 4, and ask you whether or not you can tell from your record whether the telegram known as United States Exhibit No. 2 was charged to Mr. Miller's account, and whether the same was paid for or not?

Mr. RUSH.—I object to that as incompetent, irrelevant and immaterial and no proper foundation laid, and hearsay.

The COURT.—I overrule the objection.

A. Yes.

The COURT.—Well, you can introduce them in evidence and have them explained.

Mr. MOODY.—I will offer the bill and the daily cash receipts in evidence, before I offer the telegrams—that is 3 and 4.

Mr. RUSH.—To each of them we object on the

(Testimony of F. A. Bennett.)

ground that they are incompetent, irrelevant and immaterial and not the best evidence and hearsay. Before the Court rules I would like to ask the witness a few questions.

The COURT.—All right, proceed. [55]

Q. (By Mr. RUSH.) Mr. Bennett, those matters that you offered, for instance, that carbon copy of that bill, did you make that copy yourself?

A. No, sir. It was made by some other employee of the company. I did not make the charge on the books. All I know about it is simply what I find in the records. Personally, I didn't have anything to do with it. As far as I know the records are accurate; there is a slight chance that they may not be.

Mr. RUSH.—We submit the objection.

The COURT.—Are you the superintendent of the office?

A. I am the manager, the highest officer of the office. These records are kept under my supervision. We have a standard routine how they shall be kept. If these records were incorrect, from November down, I would have ascertained by this time whether or not they were correct. It is my opinion that they are correct. I have examined them. They are regular routine records. There are hundreds such records in the office. They are ordinarily kept correctly. I do not find very many mistakes in them.

The COURT.—I will overrule the objection.

(Testimony of F. A. Bennett.)

Mr. RUSH.—Your Honor, may I ask just one question?

The COURT.—Yes, sir.

Q. (By Mr. RUSH.) This record with reference to the cash, where it recites “J. B. Miller,” is written on the line there in some handwriting which I take it is not yours? A. No, sir.

Q. Which indicates that a bill charged against J. B. Miller for the amount of two dollars and some cents has been paid? A. Yes, sir.

I do not know anything about who paid that bill, and I can tell from my record who paid it. There is nothing from my record that shows who the bill was presented to. I don't know anything about who it was presented to. [56]

Mr. RUSH.—I submit the objection.

Q. (By Mr. MOODY.) Did you have any other J. B. Miller on your charge account at that time?

A. No, sir.

Q. (By the COURT.) This defendant was the man who had the account on your books by the name of J. B. Miller? A. Yes, sir.

The COURT.—Objection overruled.

Mr. RUSH.—Exception.

**Plaintiff's Exhibit No. 3—Bill for Telegrams for
Month of November Issued to J. B. Miller.**

J. B. Miller,

Victoria Apts.

Nov. 15.	To White	San Fran.	48	48
19.	“ McMann, x	“	40	40
21.	“ Mahon, x	“	1 21	1 21
x 23.	“ White -	“	40	40
			<hr/>	
			2 49	
			Tax	04
			<hr/>	
			2 53	

(In pencil)

Pd. *Cash* Dec. 9, 1915. [57]

Plaintiff's Exhibit No. 4—Daily Cash Record of Western Union Telegraph Co.

THE WESTERN UNION TELEGRAPH COMPANY CASH RECEIVED

Collected by	At	S D	Office	Date	Dec. 9, 191—		
Name of Office	Month	Collections of Telegraph Revenue		Collections	Collections	Sundries	Total
		Previous Months	Current Month	for Time Service	for Gold and Stock		
Fe						1 73	
Union Nat		2 45					
Warden G		1 02					
W. K. Waffle House				1 00			
Co. Title		1 07					
L. B. Miller		2 53					
Asso. Charities		3 44					
Mrs. Stewart			51				
W. H. Smith		76					
Coronado						7 12	
"						8 76	
D. D. T. Gty. Co.		72					
G. G. Scripps		3 09			U. S. vs.		
L. F. Smith		2 43			No. 1098 Crim.		
Auto Club So. Cal.		5 11			MILLER		
Neptun Sea F. Co.		26			Pl. Exhibit		
Western Salt		8 49			No. 4		
Nason & Co.		6 31			Filed Nov. 22, 1916,		
Wm. S. Heink		1 01			WM. M. VAN DYKE, Clerk.		
Bradley W.		8 67			By Geo. W. Fenimore,		
S. D. Elec.		4 29			Deputy Clerk.		
A. Kerman & S.		542	Nov. Error				
D. M. C.		2	25			5 00	
H. S.						3 60	
Rex Belt						48 89	51
K. N.						1 52	
Total							

When Entering Cash Receipts from Branch Offices or Deposits Made by Branch Offices to the
Credit of the Treasurer or Main Office Cashier, Place the Amount in the Total Column.

[58]

THE WESTERN UNION TELEGRAPH COMPANY CASH RECEIVED

Collected by	At		Office	Date	191—	
Name of Office	Month	Collections of Telegraph Revenue		Collections	Collections	Total
		Previous Months	Current Month	for Time Service	for Gold and Stock	
Glenn Belt						53 95
F. Grier S. W.		32				
Hemstock & D.		1 58				
Borsseree				1 62		
Borsseree						
H. A. Honsen		74 04				
Hathaway		51				
Carpenters		1 68				
Clayton W.		26				
H. J.						14 36
Total						

When Entering Cash Receipts from Branch Offices or Deposits Made by Branch Offices to the
Credit of the Treasurer or Main Office Cashier, Place the Amount in the Total Column.

[59]

(Testimony of F. A. Bennett.)

Q. (By Mr. MOODY.) I show you United States Exhibit No. 2 for Identification, and ask you if that telegram is in all particulars as required by the rules of your company relative to those matters that you testified to, concerning taking the name of the party over the phone, the number, and to whom the account was to be charged? A. Yes, sir.

Q. Is that one of the regular original telegrams as filed in your office in San Diego? A. Yes, sir.

Q. (By the COURT.) Can you tell who in your office received that telegram?

A. A former employee now, your Honor, one Harrington Shaw. The last I heard of him, he was in El Paso, Texas. He is the man that wrote out what is in this record of the receipt of the telegram. The bookkeeper that wrote the bill, her name is Miss Stetzel. She compiled the bill from the telegrams, and the other record was written by the cashier, who accounts for all the cash. Her name is Miss Naylor. The bookkeeper made that "48" on the corner of the telegram.

Q. Well, has that "48" there on the telegram and this "48" on the bill got anything to do with each other?

A. They are identical; that is, the bill was made up from this telegram.

Q. This is the way you keep the record, keep the number of the telegram?

A. That is the amount of money that is due for it.

Q. That 48 cents is the amount of money?

A. Yes, sir.

(Testimony of F. A. Bennett.)

The charge is always entered on the telegram and then transferred to the books. The date, the party addressed, the destination and the sender's name, Mr. Miller, and the fact is marked "Charge" over here in this corner, indicate that the [60] telegram is chargeable to J. B. Miller, as indicated in this book.

Whereupon an adjournment was taken until 10 o'clock A. M. Wednesday, November, 22, 1916, and at said time.

Testimony of Myrl Stetzel, for the Government.

MYRL STETZEL, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

Direct Examination.

My name is Myrl Stetzel. I reside in San Diego and am a clerk for the Western Union, and was such in November, 1915.

Q. I will show you a document which has been introduced in evidence here as United States Exhibit No. 3, and ask you if you recognize that document.

A. Yes, this is mine.

Q. (By the COURT.) Did you make that out yourself?

A. Yes. It is a bill for telegrams for the month of November. It is a carbon copy. It is in my handwriting. The original was mailed and addressed to J. B. Miller, Victoria Apartments. I made this bill out from the telegrams on file in the office. It was made out last year. The document does not show what year it was made out. The date

(Testimony of Myrl Stetzel.)

was on the original bill, but not copied on the copy.

Q. Where did you get this word here "To White"?

A. That is the party that the telegram is going to.

Q. And what does this over here mean? (Indicating.) A. San Francisco, that is the city.

Q. The city to where it was going. What are the figures over here on the right, "48"?

A. That is the amount of money that was charged for sending the telegram.

The next item is on the 19th, to McMann, San Francisco, 40 cents; the next to Mahon, San Francisco, \$1.21, on the 20th and 21st; the next, on the 23d, to White, San Francisco, 40 cents. [61] That may have been either a telegram or a night letter. That charge on the bill is for the tax one cent on each telegram, the war tax. I don't know what that other business is down here; I didn't put it there. I did not put any other figures except what I have read.

The COURT.—Let me have those telegrams.

The COURT.—Has that telegram got anything to do with the copy of the paper you have in your hand?

A. This is the 15th; that is the first telegram on there. I made that entry from this document. The "48" is in my figures. I made that charge from this paper, probably the next day, I will say the next day after it bears date, on November 15th. I mailed out the original and mailed that to this address. The account is accurate and correct.

(Testimony of Myrl Stetzel.)

The COURT.—That is all I desire to ask her.

Mr. RUSH.—Q. This carbon copy you hold in your hand, this carbon copy of the bill, is simply a copy of that part of the bill that you wrote, is it?

A. Yes, the bill as rendered; that is written in.

Q. There was other printed matter on the bill that was rendered that does not appear on this carbon copy you have? A. Yes.

Q. And the bill that was rendered had a date on it? A. Yes.

Q. And this one does not. Now, when you went to make up this bill, you made it up from the telegram, what purports to be a telegram that you hold in your hand, did you? A. Yes, sir.

Q. You don't know anything about where that telegram came from? You just found it among the files in the office, and following your usual course of business you made that bill from the information that was contained on that telegram, or purported telegram? May I see that just a moment? This instrument I refer [62] to as a telegram is the one that has been marked "United States Exhibit No. 2 for Identity" only. Now, where that came from, you don't know, other than that you found it in the records in your office? A. That is all.

Q. You don't know who wrote it, nor how it got into the office?

A. Well, it was taken over the phone.

Q. What is that?

A. Is that what you want to know?

(Testimony of Myrl Stetzel.)

Q. I am asking you, do you know of your own knowledge— A. No.

Q. How it got into the office? A. No.

Q. All the knowledge you have of it is what you found on the bill itself; that is what I mean?

A. That is all I have to do with it.

Q. You did not talk with anybody about it, or anyone tell you anything about it? A. No.

Q. And the charge you made, so many cents, is the charge indicated on the telegram itself?

A. Yes.

Q. And you had no personal information from any other source whatsoever as to the amount of the charge, or when it was made or anything else, except what you get from the telegram that you found in the files of the office? A. No, sir.

Q. And that telegram, according to the rules of your office, indicates that it was telephoned into the office? A. Yes.

By the COURT.—Do you know whose handwriting the telegram is? [63]

A. It is that of H. S. Shaw, one of the clerks.

Q. (By Mr. MOODY.) Miss Stetzel, I will show you a telegram, or what purports to be a telegram, which I will call United States Exhibit No. 5 for Identification, and ask you if the same situation prevails as to that purported telegram as you have described that prevails in the case of the United States Exhibit No. 2 for Identification? In other words, did you take from the document the entries which you have in the bill which had been introduced

(Testimony of Myrl Stetzel.)

in evidence as United States Exhibit No. 3?

A. Yes, sir. I listed this telegram on this bill. The rate on the telegram is the same as the rate on the bill.

Q. Will you show me on the bill where you have listed that telegram?

A. (Indicating.) "11/23 White, San Francisco, 40 cents," and this U. S. Exhibit 5 for Identification was a part of the files of the office at that time.

Testimony of Etta Naylor, for the Government.

ETTA NAYLOR, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

Direct Examination.

My name is Etta Naylor. I reside in San Diego and am cashier for the Western Union. Was acting as such during November and December of last year. This document you show me, being United [64] States Exhibit No. 4 is our cash register for December 9th. It is in my handwriting.

Q. I will show you a carbon copy of a bill which has been introduced in evidence as United States Exhibit No. 3, and ask you if you can show from the Exhibit No. 4 whether or not the exhibit No. 3, the bill, has been paid?

Mr. RUSH.—I object to that as incompetent, irrelevant and immaterial, and asking for a conclusion of the witness.

Mr. MOODY.—It is in her own handwriting, if the Court please.

(Testimony of Etta Naylor.)

A. Yes, sir, that is my handwriting, and it pays this bill.

The COURT.—The objection will be overruled.

I have no memory, independent of that, about the payment of that bill. Plaintiff's Exhibit No. 4 is kept correctly. I keep it, it is balanced daily. It is a correct statement of the receipts on that day. I can tell from looking at this daily cash register item that the other item here, \$2.53, appears upon that item upon that account, the daily cash register. It is here. It is the same item. I know this because the November bills are always paid in December. It corresponds exactly with the bill, and it was received the following month, and the amount is the same \$2.53 on both the bill and on the cash register. The accounts are generally correct. I did not write the few words written with a lead pencil at the bottom of the bill.

The COURT.—I think under the testimony, that these two items are admissible in evidence.

Cross-examination.

I have no independent recollection of the payment of that bill. All that I know about it is that I find it in the record kept by me, and the record shows it was paid. I assume that the \$2.53 is the amount of the bill for the month before, because it is the same amount. If another individual, or the same individual paid the same amount for some other purpose, it [65] would appear on my cash just the same. I do not know who paid that bill, and I have no knowledge of how it was paid. I haven't any

(Testimony of Etta Naylor.)

idea whether it was paid in cash or by check, or by what individual. I don't know how the bill went out to the person who paid it, if it ever did go out, because I don't handle that part of the work. All I know is what the record shows, and the record shows that on December 9th, J. B. Miller is credited with cash, \$2.53.

**Testimony of Louise Bordeau, for the Government
(Recalled).**

LOUISE BORDEAU, recalled on behalf of the prosecution, testified as follows:

I testified yesterday that Vida White and I left San Francisco on the day after Thanksgiving in 1915. We left by the Southern Pacific. We had through tickets to San Diego. Arrived there on the morning train, the following day. Mr. Miller was at the train, when Vida Rogers and I arrived at the depot, to meet us. Vida Rogers and I went and had a bite to eat. I saw her last on Third and Broadway, I believe, when she got into this auto stage. I saw the stage that she got into. It had a sign on it that said "To Tia Juana, Mexico."

I did not see Miller any other time that morning except at the train. He was there just a very few minutes. He talked with Vida White just a very few minutes. It was just "hello"; that is all I know.

Cross-examination.

I stayed in San Diego one night. I didn't stay there two days. I testified on the 8th day of March, 1916, before the Commissioner in reference to this

(Testimony of Louise Bordeau.)

same matter. I remember the circumstances, the Commissioner being present and Mr. Gershon and others.

Q. Did you at that time testify as follows: "Q. Did you travel all the way with Miss Vida White?

A. Yes, sir, as far as San Diego, and I stayed here for two days."

A. I didn't though. As I say, we got in in the morning [66] and I left San Diego the following day for Tia Juana.

Q. And you were asked, "Where did you see her again?" And the answer: "At Tia Juana."

A. Yes, sir.

A. Yes, sir. When I got to San Diego, I went to the San Diego Hotel. We got off the train at the Santa Fe depot and went over to the San Diego Hotel. We first went up to the Oyster Loaf together and had a bite to eat. I never left Miss White at all until she got on to the auto stage. I think she got on to the auto stage at Fourth and Broadway. It was right there by the U. S. Grant Hotel. I didn't stop at the San Diego Hotel. We wasn't registered at any hotel. We both went to the San Diego Hotel together. That night I stopped at the San Diego Hotel.

**Testimony of F. A. Bennett, for the Government
(Recalled).**

F. A. BENNETT, recalled on behalf of the prosecution, testified as follows:

Q. I will show you a document which has been in-

(Testimony of F. A. Bennett.)

roduced as United States Exhibit No. 5 for Identification, and ask you if you know what that is.

Mr. RUSH.—I object to that as calling for a conclusion of the witness, and incompetent, irrelevant and immaterial.

The COURT.—Don't state the contents of it.

Q. (By Mr. MOODY.) Do you know what it is?

A. A telegram received by—

Q. Don't state the contents of it. Do you know; yes or no.

The COURT.—It is a telegram.

A. It is a telegram. I got it out of our office files at San Diego. It is the original record. It bears sending marks. It would not bear those marks if it were not sent.

Q. I will show you a record which will designate as United States Exhibit No. 6 for Identification, and ask you if you know what it is? [67]

A. A copy of a telegram. It is a record of our office in San Diego. It is a copy of a received message. It was received November 26th, 1915. It is a carbon copy of the original message made at the time the original was received. I have a record with me showing whether or not the telegram, or the original of which this is a carbon copy, was delivered in San Diego.

Mr. MOODY.—Mark that for identification as 7.

Mr. MOODY.—Now, this No. 7 for identification is what, Mr. Bennett?

A. It is a delivery sheet for November 26th. It shows the delivery of telegram 451 in San Diego.

Mr. MOODY.—I offer that in evidence as United States Exhibit 7, together with the bond, as an exemplar of the signature of this defendant.

We object to the introduction of this instrument described as a delivery sheet, on the ground it is incompetent, irrelevant and immaterial and no proper foundation laid for its introduction and hearsay.

Mr. MOODY.—Probably I should offer, together with that, the United States Exhibit 6 for Identification, showing that that message was delivered to the defendant by this exhibit No. 7, the bond being the exemplar of the signature.

The COURT.—(after discussion) Well, I will sustain the objection to this bond, unless you prove that is his signature.

Mr. MOODY.—I renew the offer of the telegram, and the blank showing it was receipted for by J. B. Miller.

Mr. RUSH.—I object to the statement of counsel as to what it shows, as incompetent, irrelevant and immaterial, and not sustained by the evidence, and an unjustifiable assertion, in view of the evidence.

The COURT.—Well, I don't think that comment is justifiable by the paper, Mr. Moody. You have a right to an exception to that. [68]

The COURT.—The objection will be sustained.

Mr. MOODY.—At this time we desire to offer all the telegrams, United States Exhibits Nos. 5 and 2 for Identification, and offer them as exhibits at this time.

(Testimony of F. A. Bennett.)

Mr. RUSH.—The defendant objects to the offer of those instruments, and each of them, on the ground they are incompetent, irrelevant and immaterial, that no proper foundation has been laid for their introduction, and that they are not the best evidence, and they are hearsay.

The COURT.—The objection will be sustained.

Mr. MOODY.—That is all, Mr. Bennett. The Government rests.

The COURT.—Well, now, over the objection of the defendant, a witness was permitted to testify to the contents of a telegram in the hands of Vida White at San Francisco. What do you desire to do with that for the defendant? It was admitted on certain representations made by the United States Attorney, which undoubtedly were made in good faith.

Mr. RUSH.—We move that that testimony of the witness Louise Bordeau, concerning and referring to a telegram, which she said she saw in the hands of Vida White, or Vida Rogers, in San Francisco—that all such testimony be stricken out, on the grounds stated in the objection at the time the objection was interposed to such testimony; and on the further ground that the proper foundation has not since been laid for the introduction of that testimony, and it has not been connected up with the defendant.

The COURT.—I will strike the evidence out concerning the contents of the telegram, as testified to by the witness; and I instruct you, gentlemen of the

(Testimony of F. A. Bennett.)

jury, that you shall consider this case without considering that testimony, and shall not consider any testimony that has been stricken out. [69]

Mr. RUSH.—May it please the Court, the defendant at this time moves the Court to instruct the jury to find a verdict of not guilty, on the ground that there is not sufficient evidence to sustain a conviction for this offense upon this charge, or either count of it.

The COURT.—The motion will be denied.

Mr. RUSH.—We rest.

Thereupon the Court admonished the jury and a recess was taken until 2 o'clock P. M. of the same day, and thereupon the Court instructed the jury as follows:

The COURT.—Gentlemen of the jury, the defendant is indicted under an act to further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls, and for other purposes. The statute in so far as it is necessary for you to consider, reads as follows:

“that any person who shall knowingly persuade, induce, intice or coerce, or cause to be persuaded, induced, enticed or coerced, or aid or assist in persuading, inducing, enticing or coercing, any woman or girl to go from one place to another in interstate or foreign commerce for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of

such person that such woman or girl shall engage in the practice of prostitution or debauchery or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go or to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce," shall be deemed guilty of violating such statute.

You are instructed that before you can convict the defendant in this case, the proof must satisfy you beyond a [70] reasonable doubt of the following facts:

First, that the defendant did knowingly, unlawfully and wilfully persuade, induce or entice Vida White, *alias* Vida Rogers, to go from the city of San Francisco, California, or other place in the State of California, to the town of Tia Juana, Mexico.

Second, that in so going, the said Vida White, *alias* Vida Rogers, went upon the line or route of the Southern Pacific Railroad, a common carrier, from the city of San Francisco, California, in the course of her journey, and that she went by automobile stage, a common carrier, from the city of San Diego, California, to the town of Tia Juana, Mexico, and not otherwise. It is not necessary, I charge you, for the Government to show that she went all the way from the city of San Francisco to the City of San Diego on the Southern Pacific Railroad. The important thing in his connection is that she

traveled by a common carrier, engaged in foreign commerce, on her route after she had been persuaded, induced or inticed as aforesaid.

Third, that at the time the defendant so persuaded, induced or enticed said Vida White, *alias* Vida Rogers, to go to Tia Juana, Mexico, from the State of California, it was for the purpose of prostitution, debauchery, or some other immoral purpose of the same sort and kind; and that the defendant intended that Vida White, *alias* Vida Rogers, should and would, when and after she reached Tia Juana, in the Republic of Mexico, personally engage in prostitution, debauchery or some other immoral purpose of the same sort and kind. And I instruct you in this connection that if the said Vida White, *alias* Vida Rogers, was placed by the defendant in a house of prostitution in the city of Tia Juana, Mexico, for the purpose of having her remain therein, for the purpose of having her manage a house of prostitution, as landlady or superintendent thereon, that that is an immoral purpose within the meaning of the law.

It is not necessary for the Government to prove that the defendant paid any part of the expenses of said Vida White, [71] *alias* Vida Rogers, in going to said Tia Juana, Mexico.

You must not be prejudiced against the defendant because of the fact that he is charged with an offense, and you must not convict this defendant for fear that a crime may go unavenged, or for the purpose of deterring others from the commission of a like offense.

You are instructed gentlemen, that you are the exclusive judges of the credibility of the witnesses whose testimony has been admitted in evidence herein, and of the effect and value of such evidence. Your power in his regard, however, is not arbitrary, but is *to exercised* with a legal discretion and in subordination to the rules of evidence. It is the province of the Court, under the law, to state to you the rules of law applicable to the case, and you in your deliberations will be guided by these rules so stated. It is your duty, unaided by the Court, to pass upon and decide the questions of fact.

Every witness is presumed to speak the truth, but this presumption may be repelled by the manner in which he or she testifies, by his or her appearance upon the stand, by the character of his or her testimony, or by the giving of false or perjured testimony by him or her, or by evidence affecting his or her character for truth, honesty or integrity, or by his or her motive, interest or bias, or by contradictory evidence.

A witness may be impeached by the party against whom he or she was called by contradictory evidence, by evidence that he or she had made at other times statements inconsistent with his or her present testimony, or by evidence that his or her general reputation for truth, honesty or integrity is bad. If you believe that any witness has been impeached, or that the presumption of truthfulness attaching to the testimony of such witness has been repelled, then you will give the testimony of such witness

such credibility, if any, as you may think it entitled to. You are not [72] bound to decide in conformity with the declarations of any number of witnesses which do not produce conviction in your minds against a less number, or against the presumption of other evidence satisfying your minds.

The defendant in this case has offered no testimony. He had a right to decline to offer any testimony and depend upon the failure of the Government to prove a case against him. He had a right to go upon the witness stand and testify in his own behalf if he chose to do so. The Government could not compel him to go, and he had a right to remain off the witness-stand. The law expressly provides that no presumption adverse to him is to arise from the fact, from the mere fact that he does not place himself upon the witness-stand. So in this case the mere fact that this defendant has not availed himself of the privilege which the law gives him should not be permitted by you to prejudice him in any way. It should not be considered as evidence either as to his guilt or innocence.

There are two classes of evidence recognized and admitted in courts of justice, upon either of which juries may lawfully find an accused guilty of crime. One is direct or positive evidence of an eye-witness to the commission of a crime. The other is testimony and proof of a chain of circumstances pointing sufficiently strongly to the commission of the crime by the defendant, and which is known as circumstantial evidence. Such evidence may consist of admissions by the defendant, plans for the

commission of the crime,—in short, any acts, declarations or circumstances admitted in evidence tending to connect the defendant with the commission of the crime. The law requires you to reconcile any and all circumstances that have been shown with the innocence of the defendant, if you can reasonably do so when all the evidence in the case *is* considered. And if it is possible for you to account for the acts of the defendant upon any other reasonable hypothesis than that of guilt, then it is your duty [73] to so account for them and to find him not guilty. Where the evidence is entirely circumstantial, and yet is not only consistent with the guilt of the defendant, but inconsistent with any other rational conclusion, the law makes it the duty of the jury to convict.

The Court further instructs you that neither the finding of the indictment nor any allegation therein raises any presumption whatever against the defendant, but that the burden of proof is on the Government to establish the defendant's guilt, and that the law presumes the defendant innocent until proven guilty beyond a reasonable doubt; and this rule applies to every material element of the offense charged.

The Court further instructs you that a reasonable doubt is one which is reasonable in view of all the evidence; and if, after an impartial comparison and consideration of all the evidence, you can candidly say that you are not satisfied of the defendant's guilt, you have a reasonable doubt. But if after such impartial comparison and consideration of all

the evidence, you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt.

This case, like all cases triable in a court of justice, should be determined by the jury upon the evidence before them, and upon that alone, subject to the rules of law laid down for your guidance by the Court, and no juror acting conscientiously can base his verdict upon any other consideration. You should not speculate as to the existence of matters not introduced in evidence, and you should not indulge in suspicious or speculative theories outside of the evidence. In this connection you are instructed that juries are impaneled for the purpose of agreeing upon a verdict, if they can conscientiously do so. It is true each juror must decide the matter for himself, yet he should do so [74] only after a consideration of the case with his fellow jurors, and he should not hesitate to sacrifice his view or opinions of the case when convinced that they are erroneous, even though in so doing he defer to the views or opinions of others.

There are two counts in the indictment. You can find the defendant guilty of one and acquit him on the other; or you can find him guilty under both counts, or acquit him on both counts.

When you shall retire to consider your verdict, you shall elect one of your number foreman, who shall sign the verdict when you shall have agreed.

You cannot sign or return a verdict unless you all concur in the verdict.

Mr. RUSH.—Will your Honor direct that the usual exception be entered, or shall it be done later? I don't care to waive it.

The COURT.—Well, you may take such course as you—do you desire an exception now?

Mr. RUSH.—Yes, sir.

The COURT.—You better state your exception.

Mr. RUSH.—The defendant excepts to each and all the instructions given by the Court, other than those presented or suggested by the defendant, and to each and every amendment and modification of instructions proposed by the defendant, and to the refusal to give each instruction proposed by the defendant and not given by the Court.

Thereupon the bailiff was sworn by the clerk and the jury retired in charge of the bailiff at 2:20 o'clock, P. M.

The jurors returned into court at 4:40 P. M. when the following additional proceedings were had, to wit:

The COURT.—I have a note, presented to me by the bailiff in charge of the jury, reading as follows:

“Can the jury construe a mutual agreement to be persuasion or inducement? L. J. Bradford, Foreman.” [75]

Do you desire an instruction on that subject, gentlemen.

The FOREMAN.—We do.

The COURT.—The statute, as I read it to you, reads that “Any person who shall knowingly, per-

sua^de, induce, entice or coerce, or cause to be persuaded, induced, enticed or coerced, or aid or assist in persuading, inducing, enticing or coercing, any woman," and so forth.

It is entirely proper for me to instruct you on the subject on which you inquire.

Now according to the Standard dictionary, one of the definitions of the words "induce" is "to lead in, to introduce. Second, to draw on, to over-spread. Third, to lead on, to influence, to prevail on, to incite, to move by persuasion or influence. Fourth, to bring on, to effect, a cause; as a fever induced by fatigue or exposure." The synonyms of this word are: "To move, instigate, urge, impel, incite, press, influence, actuate."

The word "persuade" means: "To influence or gain over by argument, advice, entreaty, expostulation; to draw or incline to a determination by presenting sufficient motives. Second, to try to influence. Third, to convince by argument or by reasons offered or suggested from reflection; to cause to believe. Fourth, to inculcate by argument or expostulation, to advise, to recommend." Synonyms: "To convince, induce, prevail on, win over, allure, entice."

Now in the Law Dictionary, the word "inducement" in contracts is "That the benefit or advantage which the promissor is to receive from the contract is the inducement to make it."

In criminal evidence it is "The motive which leads or tempts to the commission of crime."

Now, with those definitions in mind concerning

these words, I instruct you that a consideration for entering into an [76] agreement is an inducement to enter into the agreement. I think probably you understand the situation now.

The FOREMAN.—Your Honor, we would like to have the two indictments read, so we may understand the both of them, one separated from the other. We were not quite sure.

The COURT.—Yes, you may read the indictments.

Whereupon the indictment was read by the clerk and the jury again retired at 5 o'clock P. M.

That the exception of the defendant to the giving to the jury of the above instruction, by the Court, was thereafter allowed and entered by the Court, on the day of the making of the motion for a new trial, as appears by the minutes of the Court.

The Court refused to give to the jury the following instructions requested by the defendant, to which refusal the defendant objected and excepted;

Instruction No. 19.

You are instructed that before you can suffer yourselves to convict the defendant in this case, you must be satisfied by proof beyond all reasonable doubt, of the following facts:

First. That the defendant, Miller, did knowingly, unlawfully and wilfully persuade, induce or entice Vida White, *alias* Vida Rogers, to go from the city of San Francisco, California, to the town of Tia Juana, Mexico;

Second. That in so going said Vila White, *alias* Vida Rogers, went upon the line or route of the Southern Pacific Railroad Company, a common car-

rier, from the city of San Francisco, California, to the city of San Diego, California, and via automobile stage, a common carrier, from the city of San Diego, California, to the town of Tia Juana, Mexico, and not otherwise.

Third. That at the time the defendant so persuaded, induced or enticed said Vido White, *alias* Vida Rogers, to go from San Francisco, California, to Tia Juana, Mexico, it was for the purposes of prostitution, debauchery, or some other immoral purpose of the same sort and kind. [77]

If the Government has failed to prove any of the elements above set forth, beyond all reasonable doubt, it is your duty and you should find the defendant not guilty.

Instruction No. 20.

You are instructed that unless you are satisfied from the evidence beyond a reasonable *court* that the defendant *intenced* that Vida White, *alias* Vida Rogers, should and would, when and after she reached Tia Juana, in the Republic of Mexico, personally engage in prostitution or debauchery, or some other immoral practice of the same sort and kind, you should acquit the defendant.

Instruction No. 21.

It is not sufficient to warrant a conviction of the defendant that he intended that Vida White, *alias* Vida Rogers, should after she reached Tia Juana, in the Republic of Mexico, act as landlady or housekeeper in a house of prostitution, or manage or operate such a house, unless it was the intention of the defendant that said Vida White, *alias* Vida Rogers,

should, as a result of leading such a life, eventually give herself up to a condition of debauchery which would eventually lead to a course of sexual immorality on her part.

Instruction No. 1.

The Court deeming the evidence in this case insufficient to warrant a conviction of the defendant, instructs the jury to acquit him.

Instruction No. 5.

You are instructed that the law presumes the defendant to be innocent, and that every presumption of the law is in favor of his innocence, and it is not your duty to look for some theory upon which to convict the defendant, but on the contrary, it is your duty, and the law requires you to reconcile any and all [78] circumstances that have been shown with the innocence of the defendant, if you can reasonably do so, when all the evidence in the case is considered, and if it is possible for you to account for the acts of the defendant upon any other reasonable hypothesis than his guilt, then it is your duty to so account for it and to find him not guilty.

Instruction No. 7.

In considering the evidence if you can reasonably account for any fact in this case on a theory or hypothesis which will admit of the defendant's innocence, it is your duty under the law to do so and reject any theory or supposition on which it might point to his guilt, even though such theory admits of his innocence.

Instruction No. 9.

If the evidence relating to any circumstance in this

case is, in view of all the evidence, susceptible of two interpretations, one of which would point to the defendant's guilt and the other which would admit of his innocence then it is your duty in considering such evidence to adopt that interpretation which will admit of defendant's innocence and reject that which would point to his guilt.

Instruction No. 12.

You are instructed that the defendant in this case is entitled to the individual opinion of each member of this jury and that no member of this jury should vote for the conviction of the defendant because of the opinion of the other members of the jury, as long as he, himself, has a reasonable doubt as to the guilt of the defendant, and should refuse to vote for the conviction of the defendant, notwithstanding any contrary opinion that the other members of the jury may entertain, so long as he, himself, has a reasonable doubt of the guilt of the defendant.

Instruction No. 13.

The Court instructs you that your personal opinions as [79] to the facts not proven cannot properly be considered as the basis of your verdict. You may believe as men that certain facts exist, but as jurors, you can only act upon the evidence introduced upon the trial and from that, and that only, you must form your verdict.

Instruction No. 14.

You are instructed that mere probabilities are not sufficient to warrant a conviction of the defendant, nor is it sufficient that the greater weight or preponderance of the evidence supports the charge against

him; nor that upon the doctrine of chances it is more probable that the defendant is guilty than innocent; but to warrant a conviction of the defendant, he must be proven to be guilty so clearly and conclusively that there is no reasonable theory under the law and the evidence upon which he can be innocent.

Instruction No. 18.

In order to convict the defendant upon circumstantial evidence, it is necessary not only that the circumstances concur to show that he committed the crime charged but that they are inconsistent with any other rational conclusion. It is not sufficient that the circumstances proven coincide with, account for and render probable the guilt of the defendant, but they must exclude to a moral certainty every other reasonable theory but the single one of guilt, or the jury must find the defendant not guilty.

And the objections and exceptions of the defendant to the refusal of the Court to give to the jury each of the foregoing instructions, were taken as hereinabove set forth. [80]

That thereafter, to wit, at about the hour of 5:02 o'clock P. M. on said day, the jury returned duly and regularly into court their verdict finding the said defendant not guilty as charged in the first count of the indictment and guilty as charged in the second count of the indictment, with recommendation for leniency.

That the time for sentencing said defendant was thereupon duly continued by the Court from time to time until the 1st day of December, 1916, upon which date the said defendant filed in said court his motion

for a new trial. That thereupon on said date, the Court duly and regularly heard the motion of said defendant for a new trial and duly and regularly made its order denying said motion, to which ruling the exception of the defendant was duly made and entered, and thereupon, on the same day, defendant filed his motion in said court in arrest of judgment and the Court thereupon heard the same and duly and regularly made its order denying the said motion in arrest of judgment, to which ruling the exception of the defendant was duly made and entered, and thereupon the Court continued the time for pronouncing judgment in said case from time to time until the 12th day of December, 1916, at which time the Court duly and regularly pronounced sentence upon the defendant, adjudging that he pay a fine in the sum of one thousand dollars and be imprisoned in the Federal Penitentiary, at McNeil Island, for the period of one year and one day, to which sentence, the exception of the defendant was duly taken and allowed.

Thereupon, on the said 12th day of December, 1916, the defendant duly and regularly filed in said court his petition for a writ of error, and concurrently therewith his assignment of errors. That the Court at said time allowed said writ of error and fixed a supersedeas bond upon appeal in the sum of \$2500, to be duly given by the said defendant. That thereafter, to wit, [81] on the 15th day of December, 1916, said defendant gave and filed in said court his said supersedeas bond in the said sum of \$2500, which was duly approved and allowed by said Court.

That thereupon on said 15th day of December, 1916, a writ of error duly issued in said cause, returnable before the United States Circuit Court of Appeals, for the Ninth Circuit. That thereupon upon said date, citation on said writ of error duly issued, served upon the United States District Attorney and filed with the clerk of said court.

The indictment, demurrer, order overruling the demurrer, petition for writ of error, assignment of errors and the various orders and proceedings of the Court referred to herein, are fully set out in the printed record on appeal of the clerk to be filed herein and ordered to be printed herewith.

Presentation of Bill of Exceptions, Notice Thereof and Stipulation for Settlement and Allowance.

The defendant, James B. Simpson, sometimes otherwise known as James B. Miller, hereby presents the foregoing as his bill of exceptions herein and respectfully asks that the same may be allowed.

JUD R. RUSH,

ALFRED F. MacDONALD,

Attorneys for Defendant.

To Albert Schoonover, Esq., United States District Attorney for the Southern District of California.

You will please take notice that the foregoing constitutes and is the proposed Bill of Exceptions of the defendant in the above-entitled action, and that said defendant will ask the allowance of the same.

JUD R. RUSH,

ALFRED F. MacDONALD,

Attorneys for Defendant. [82]

Service of the foregoing Bill of Exceptions is hereby acknowledged this 28th day of December, 1916.

CLYDE R. MOODY,

Asst. U. S. Atty., Attorney for the U. S. A.

Stipulation as to Correctness of Bill of Exceptions.

It is hereby stipulated that the foregoing Bill of Exceptions is correct, and that the same be settled and allowed by the Court.

JUD R. RUSH,

ALFRED F. MacDONALD,

Attorneys for Defendant.

CLYDE R. MOODY,

Asst. United States Attorney, Attorney for the
United States of America.

**Order Allowing Bill of Exceptions and Making Same
Part of the Record.**

The foregoing Bill of Exceptions, having been duly presented to the Court, the same is hereby duly allowed and signed and made a part of the records in this cause.

Dated this 28 day of December, 1916.

OSCAR A. TRIPPET,

Judge.

[Endorsed]: Original. No. 1098—Crim. In the United States District Court, Southern District of California, Southern Division. United States of America, Plaintiff, vs. James B. Simpson, indicted as James B. Miller, Defendant. Bill of Exceptions. Received Copy of within Bill of Exceptions this — day of December, 1916. Clyde R. Moody, Asst. U. S.

Atty., Attorney for Plaintiff. Filed Dec. 28, 1916.
Wm. M. Van Dyke. Clerk. By Murray C White,
Deputy Clerk. Jud R. Rush & Alfred F. MacDon-
ald, 600 Bryson Building, Los Angeles, California,
Attorneys for Defendant. [83]

*In the District Court of the United States, Southern
District of California, Southern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

Petition for Writ of Error.

Your petitioner, James B. Simpson, indicted as James B. Miller, defendant in the above-entitled cause, brings this, his petition for a writ of error to the District Court of the United States, in and for the Southern District of California, and in that behalf your petitioner says:

That on the 12 day of December, 1916, there was made, given and rendered in the above-entitled court and cause a judgment against your petitioner whereby your petitioner was adjudged and sentenced to a fine of \$1,000 and imprisonment in the penitentiary at McNeil Island for a period of one year and one day, and your petitioner says that he is advised by his counsel and avers that there was and is manifest error in the records and proceedings had in said cause, and in the making, giving and entry of such

judgment and sentence, to the great injury and damage of your petitioner, and each and all of which errors will be more fully made to appear by an examination of said records, and by an examination of the Bill of Exceptions to be hereafter by your petitioner tendered and filed, and the assignment of errors which is filed with this petition, and to that end that the judgment, sentence and proceedings may be reviewed by the United States [84] Circuit Court of Appeals for the Ninth Circuit, and our petitioner prays that writ of error may be issued directed therefrom to the said District Court of the United States, for the Southern District of California, Southern Division, returnable according to law and the practice of the Court, and that there may be directed to be returned pursuant thereto a true copy copy of the record, Bill of Exceptions, Assignment of Errors, and all proceedings had and to be had in said cause, and that the same may be removed unto the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the error, if any has happened, may be duly corrected and full and speedy justice done your petitioner.

And your petitioner makes the assignment of errors filed herewith, upon which he will rely, and will be made to appear by a return of the said record, in obedience to said Writ.

WHEREFORE, your petitioner prays the issuance of a writ as herein prayed, and that the assignment of errors filed herewith may be considered as his assignment upon the Writ, and that the judgment rendered in this cause may be reversed and

held for naught, and that said cause be remanded for further proceedings, and that he be awarded a supersedeas upon said judgment, and all necessary process, including bail.

JAMES B. SIMPSON,
JAMES B. MILLER.

ALFRED F. MacDONALD,
JUD R. RUSH,

Attorneys for Defendant. [85]

[Endorsed]: Original. No. 1098. In the United States District Court, Southern District of California, Southern Division. United States of America, Plaintiff, vs. James B. Simpson, Indicted as James B. Miller, Defendant. Petition for Writ of Error. Received Copy of within Petition this 12th day of December, 1916. Clyde R. Moody, Asst. U. S. Atty., Attorney for Plaintiff. Filed Dec. 12, 1916. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Jud R. Rush, Alfred F. MacDonald, Attorneys for Defendant. [86]

*In the District Court of the United States, Southern
District of California, Southern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

Assignment of Errors.

Comes now James B. Simpson, indicted as James B. Miller, the defendant above named, and files the following statement and assignment of errors upon which he will rely upon the prosecution of a writ of error in the above-entitled cause, a petition for which writ on behalf of said defendant is filed at the same time with this assignment.

I.

The Court erred in overruling the demurrer of the defendant to the indictment in said cause, and to each and every count thereof, for the following reasons:

(a) That said indictment does not, nor does any count thereof, state facts sufficient to constitute a punishable offense, or any offense or crime against the laws or statutes of the United States of America.

(b) That said indictment, and each of the counts therein contained, and particularly the second count thereof is not direct or certain as respects the particular circumstances of the offense attempted to be charged, and that said circumstances are necessary to be alleged in order to constitute a complete offense.

(c) That said indictment, and each of the counts therein [87] contained, and particularly the second count thereof, is not direct or certain sufficiently to inform the defendant of the particular circumstances of the offense with which he is attempted to be charged, and is insufficient, uncertain and indefinite to such an extent that the defendant was not

advised thereby of the nature of the charges against him so that he might properly prepare and submit defenses thereto.

And the defendant's exception to the overruling of said demurrer was duly taken and allowed.

II.

The Court erred in overruling the objection of the defendant to the questions propounded to the witness, Louise Bordeau, in reference to the contents of a telegram received by Vida White, in San Francisco, California, and shown to said witness, which questions, objections, answers and exceptions are as follows:

Q. I will exhibit to you a telegram, which I will call United States Exhibit 1 for identification, and I will ask you if that is the wording of the telegram that you say that this woman received?

Mr. RUSH.—Just a moment. I object to that question as incompetent, irrelevant and immaterial.

The COURT.—I think the "wording," Mr. Moody, —if that is the telegram—

Mr. MOODY.—Your Honor, it is impossible to produce the typewritten telegram which is delivered to a woman, but the telegram which is filed, and which can subsequently be proven to have been filed,—if this woman can testify that that is the same wording that she saw at that time, then it would be a sufficient connection of the telegram.

The COURT.—If you want to introduce a copy, you will have to show that you cannot produce the original. [88]

Mr. MOODY.—This is the original; this is not a

copy. This is the one which was filed for record, and which was sent, which was filed in San Diego. This is not a copy.

Mr. RUSH.—I want to add to my objection the further ground that it calls for hearsay.

The COURT.—Now, do you propose to prove that you cannot get the copy, or the original, whichever it may be designated?

Mr. MOODY.—I propose to show that the woman, Vida Rogers is without the jurisdiction of this court.

The COURT.—And that she has got that telegram?

Mr. MOODY.—That is impossible for us to say. The last time we had any information about it, she had it. But she is now without the jurisdiction of the Court, and the process of this court will not reach her.

The COURT.—You are going to prove that?

Mr. MOODY.—I will prove that by this witness.

The COURT.—I think you better prove that first, Mr. Moody.

Mr. MOODY.—Do you know where Vida Rogers is at the present time?

A. I believe she is in Tia Juana.

Q. When did you see her in Tia Juana last?

A. It was about in July, was the last time I was over there.

Q. And she was there at that time?

A. She was there at that time.

Q. Have you seen her since?

Mr. RUSH.—When was that?

Mr. MOODY.—In July of this year.

The COURT.—July of this year you are speaking about?

A. Yes, sir.

Mr. MOODY.—Q. Have you seen her since?

A. No, I have not. [89]

Q. Have you seen her in the United States since last November? A. Oh, yes, sir.

Q. When was the last time you saw her in the United States?

A. Well, it was some time right after the floods; I don't remember just when.

Q. The last January floods? A. Yes.

Q. And since that time you have seen her in the United States? A. No.

Mr. MOODY.—Now, if the Court desires at this time any further evidence on the whereabouts of the woman, Vida Rogers, I can produce such testimony and withdraw this witness.

The COURT.—Well, I will not require you to withdraw her. Upon your representation that you expect to do it, I will permit the evidence, and I will strike it out if you fail to produce the evidence.

Mr. RUSH.—Your Honor, before your Honor rules will you permit me to suggest one matter, and that is this:—I do it because I don't think your Honor apprehends the point of my objection. Before it can be shown that a telegram was received in San Francisco by this woman, or by anyone, it must be shown a telegram was sent.

Mr. MOODY.—I am not going to introduce this telegram into evidence.

The COURT.—Wait a minute, Mr. Moody. One at a time.

Mr. RUSH.—And before it can be proven that the telegram was sent it must be proven it was sent by this defendant. So to show this woman a writing, or what purports to be a copy—not the thing that she saw there, but something containing the same language that she saw there,—and ask her to refresh her memory [90] from that, and say that is the same language that was in the telegram that she saw in San Francisco, in any event would not be competent. She can only refresh her recollection from memoranda that she made herself. She cannot refresh her recollection from memoranda made by someone else, and which she, herself did not see made and never saw before this time. This, at the most, would be simply a memorandum of what the operator in the town from which it was sent, sent, and is not the identical object that she saw.

The COURT.—Isn't that so, Mr. Moody, that she can only refresh her memory and testify she has either got to testify from memory, or from memoranda which she made herself?

Mr. MOODY.—The reason why I didn't ask her was because I did not desire that this woman should testify what was in the telegram she saw in San Francisco—which she can testify from memory after it is shown that the telegram, or the party whose custody it was, is now without the jurisdiction of the Court—until after this telegram had been introduced in evidence; and I was only attempting at this time to present this telegram in the record for the pur-

pose of identification by this witness. If the Court desires, I can ask her what was in that telegram.

The COURT.—I think you better proceed that way, from her own memory.

Mr. MOODY.—Q. You say this woman received a telegram in San Francisco just prior to the time that you and she left there, is that right?

A. Yes, sir.

Q. Do you remember about what date it was that she received the telegram?

A. No, sir, I couldn't tell you that, the day.

Q. Well, about how long was it before the day after [91] Thanksgiving, the day upon which you said you left?

A. It must have been—Oh, close on to three weeks.

Q. About three weeks before you left that she received this telegram? A. Yes, sir.

Q. Do you recall at this time—Do you recall whether or not Vida Rogers showed you the telegram and whether you read the telegram that she received, the first one? A. Yes, sir.

Q. And do you recall at this time the substance of that telegram?

A. Well, perhaps not word for word.

Q. But do you recall the substance of it?

A. Yes, sir.

Q. What was the substance of it?

Mr. RUSH.—We object to that as incompetent, irrelevant and immaterial, and no proper foundation laid and hearsay.

The COURT.—Well, on the promise of the United States attorney that they will show that the recipient

of the telegram is not in the jurisdiction of the Court, the objection will be overruled.

Mr. RUSH.—We except to the ruling of the Court.

Q. Now, will you kindly state the wording of the contents of the telegram, as you remember it?

A. It was about a house with a dance-hall, kitchen and bar and five rooms in connection. “Looks like a good proposition. Will finance everything. Will split fifty-fifty.”

The testimony of the witness in reference to the contents of the telegram was thereafter, upon failure of the Government to show that its recipient was not in the jurisdiction of the court, and upon motion of the defendant that said evidence was incompetent, irrelevant and immaterial, not the best evidence, [92] hearsay and no proper foundation laid, stricken out, but the defendant hereby assigns its admission in evidence as error for the reason that it was so highly prejudicial in its character, that in view of all the other evidence in the case, it is shown that by its admission, the jury were led to convict the defendant by reason of passion and prejudice, and not upon the legal evidence introduced at the trial of said cause.

III.

The Court erred in overruling the objection of the defendants to the following question propounded by the plaintiff to the witness, Louise Bordeaux:

Q. Before you went to Tia Juana, did Vida Rogers receive any other telegram, if you know?

A. She received one other.

Q. About how long after the first one came?

A. It must have been two weeks after the first one came.

Q. And how long before she left San Francisco?

A. Just a very few days.

Q. Did you see that telegram?

A. Yes, sir.

Q. Did you read it? A. Yes, sir.

Q. Do you recall at this time what that telegram said? A. Yes, sir.

Q. What did it say?

Mr. RUSH.—We object to that on the ground it is incompetent, irrelevant and immaterial, no proper foundation laid, not the best evidence, and calls for hearsay.

The COURT.—The objection will be overruled.

Mr. MOODY.—Q. What did that telegram say, as near as you can recall at this time?

A. "Everything ready. Leave Thursday or Friday," I believe it was. [93]

Q. Do you remember by whom it was signed?

A. "Jim."

The testimony of the witness in reference to the contents of the telegram was thereafter, upon failure of the Government to show that its recipient was not in the jurisdiction of the Court, and upon motion of the defendant that said evidence was incompetent, irrelevant and immaterial, not the best evidence, hearsay and no proper foundation laid, stricken out, but the defendant hereby assigns its admission in evidence as error for the reason that it was so highly prejudicial in its character, that in view of all the other evidence in the case it is shown

that by its admission the jury were led to convict the defendant by reason of passion and prejudice, and upon the testimony erroneously admitted, and not upon the legal evidence introduced at the trial of said cause. And the exception of the defendant to such objection and ruling of the Court was duly taken and allowed.

IV.

The Court erred in denying the defendant's motion to instruct the jury to bring in a verdict of not guilty, and to find the defendant "Not Guilty," at the conclusion of the case presented by the plaintiff, to the denial of which motion and to the ruling of the Court denying said motion, the defendant's exception was duly taken and allowed.

V.

The Court erred in rendering its judgment in this cause against the defendant for the reason that the indictment in said cause does not charge the defendant with any offense against or violation of the laws of the United States of America.

VI.

The Court erred in rendering its judgment in this cause against the defendant for the reason that the evidence introduced at the trial of said cause was not sufficient to justify the [94] verdict of the jury therein, or the judgment of the Court against the defendant.

VII.

The Court erred in rendering its judgment in this cause against the defendant for the reason that the testimony did not show or tend to show that the de-

fendant had committed any offense set out or attempted to be set out in the indictment.

VIII.

The Court erred in rendering its judgment in this cause against the defendant, for the reason that the testimony introduced at the trial of said cause did not tend to connect the defendant with the commission of any offense set out in the indictment.

IX.

The Court erred in rendering its judgment in this cause against the defendant, for the reason that the testimony introduced at the trial of said cause did not show, or tend to show that the defendant did knowingly persuade, induce and entice Vida Rogers to go from one place to another in foreign commerce.

X.

The Court erred in giving the following instruction to the jury:

“Gentlemen of the Jury: The defendant is indicted under an Act to further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls, and for other purposes. The statute, in so far as it is necessary for you to consider, is as follows: ‘That any person who shall knowingly persuade, induce, entice or coerce or cause to be persuaded, induced, enticed or coerced, or aid or assist in persuading, inducing enticing or coercing any woman or girl to go from one place to another in interstate or foreign commerce—for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the

part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral [96] practice, whether with or without her consent, and who shall thereby knowingly cause, or aid or assist in causing such woman or girl to go and to be carried, or transported as a passenger upon the line or route of any common carrier or carriers, in interstate or foreign commerce, shall be deemed guilty of a violation of said statute.'

You are instructed that before you can convict the defendant in this case, the proof must satisfy you beyond a reasonable doubt of the following facts:

First. That the defendant did knowingly, unlawfully and wilfully persuade, induce or entice Vida White, *alias* Vida Rogers, to go from the city of San Francisco, California, or other place in the State of California, to the town of Tia Juana, Mexico;

Second. That in so going, the said Vida White, *alias* Vida Rogers, went upon the line or route of the Southern Pacific Railroad Company, a common carrier from the city of San Francisco, in the course of her journey, and that she went by automobile stage, a common carrier from the city of San Diego, California, to the town of Tia Juana, Mexico, and not otherwise.

It is not necessary, I charge you, for the Government to show that she went all the way from the city of San Francisco to the city of San Diego on the Southern Pacific Railroad. The important thing in this connection is that she traveled by a common car-

rier, engaged in foreign commerce on her route, after she had been persuaded, induced or enticed, as aforesaid.

Third. That at the time the defendant so persuaded, induced or enticed said Vida White, *alias* Vida Rogers to go to Tia Juana, Mexico, from the State of California, it was for the purpose of prostitution, debauchery, or some other immoral purpose of the same sort and kind, and that the defendant intended that Vida White, *alias* Vida Rogers, should and would, when and after she reached Tia Juana, in the Republic of Mexico, personally engage in prostitution, debauchery, or some other immoral practice of the same sort and kind. And I instruct you in this connection that if the said Vida White, *alias* Vida Rogers, was [97] placed by the defendant in a house of prostitution in the town of Tia Juana, for the purpose of having her remain therein, and for the purpose of having her manage a house of prostitution as landlady or superintendent, that that is an immoral purpose within the meaning of the law. It is not necessary for the Government to prove that the defendant paid any part of the expenses of the said Vida White, *alias* Vida Rogers, in going to said Tia Juana, Mexico."

To the giving of which instruction the exception of the defendant was duly taken and allowed.

XI.

The Court erred in giving to the jury, in compliance with a note, presented to the Court by the bailiff in charge of jury, reading as follows:

"Can the jury construe a mutual agreement to be

persuasion or inducement? L. J. Bradford, Foreman," the following instruction:

The COURT.—The statute, as I read it to you, reads that "Any person who shall knowingly persuade, induce, entice or coerce, or cause to be persuaded, induced, enticed or coerced, or aid or assist in persuading inducing, enticing or coercing, any woman," and so forth.

It is entirely proper for me to instruct you on the subject on which you inquire.

Now, according to the Standard Dictionary, one of the definitions of the word, "induce" is "to lead in, to introduce. Second, to draw on, to overspread. Third, to lead on, to influence, to prevail on, to incite, to move by persuasion or influence. Fourth, to bring on, to effect, to cause; as a fever induced by fatigue or exposure." The synonyms of this word are "to move, instigate, urge, impel, incite, press, influence actuate." [98]

The word "persuade" means: "To influence or gain over by argument advice, entreaty, expostulation; to draw or incline to a determination by presenting sufficient motives. Second, to try to influence. Third, to convince by argument, or by reasons offered or suggested from reflection; to cause to believe. Fourth, to inculcate by argument or expostulation, to advise, to recommend." Synonyms: "to convince, induce, prevail on, win over, allure, entice."

Now, in the Law Dictionary the word "inducement" in contracts is "that the benefit or advantage which the promisor is to receive from the contract is

the inducement to make it.”

In criminal evidence it is, “the motive which leads or tempts to the commission of crime.”

Now, with those definitions in mind concerning these words, I instruct you that a consideration for entering into an agreement is an inducement to enter into the agreement. I think probably you understand the situation now.

To the giving of which instruction the exception of the defendant was duly taken and allowed.

XII.

The Court erred in refusing to give the jury the following instruction requested by the defendant, to which refusal the defendant objected and excepted.

You are instructed that before you can suffer yourselves to convict the defendant in this case, you must be satisfied by proof beyond all reasonable doubt of the following facts:

First. That the defendant, Miller, did knowingly, unlawfully and wilfully persuade, induce or entice Vida White, *alias* Vida Rogers, to go from the city of San Francisco, California, to the town of Tia Juana, Mexico;

Second. That in so going said Vida White, *alias* Vida Rogers went upon the line or route of the Southern Pacific Railroad [99] Company, a common carrier, from the city of San Francisco, California, to the city of San Diego, California, and via automobile stage, a common carrier from the city of San Diego, California, to the town of Tia Juana, Mexico, and not otherwise.

Third. That at the time the defendant so persuaded, induced or enticed said Vida White, *alias* Vida Rogers to go from San Francisco, California, to Tia Juana, Mexico, it was for the purposes of prostitution, debauchery, or some other immoral purpose of the same sort and kind.

If the Government has failed to prove any of the elements above set forth, beyond all reasonable doubt, it is *is* your duty and you should find the defendant not guilty.

You are instructed that unless you are satisfied from the evidence beyond a reasonable doubt that the defendant intended that Vida White, *alias* Vida Rogers, should and would, when and after she reached Tia Juana, in the Republic of Mexico, personally engage in prostitution or debauchery, or some other immoral practice of the same sort and kind, you should acquit the defendant.

It is not sufficient to warrant a conviction of the defendant that he intended that Vida White, *alias* Vida Rogers, should after she reached Tia Juana, in the Republic of Mexico, act as landlady or house-keeper in a house of prostitution, or manage or operate such a house, unless it was the intention of the defendant that the said Vida White, *alias* Vida Rogers, should as a result of leading such a life, eventually give herself up to a condition of debauchery which would eventually lead to a course of sexual immorality on her part.

The Court, deeming the evidence in this case insufficient to warrant a conviction of the defendant, instructs the jury to acquit him.

You are instructed that the law presumes the defendant [100] to be innocent, and that every presumption of the law is in favor of his innocence, and it is not your duty to look for some theory upon which to convict the defendant, but on the contrary, it is your duty, and the law requires you to reconcile any and all circumstances that have been shown with the innocence of the defendant, if you can reasonably do so, when all the evidence in the case is considered, and if it is possible for you to account for the acts of the defendant upon any other reasonable hypothesis than his guilt, then it is your duty to so account for it and to find him not guilty.

In considering the evidence if you can reasonably account for any fact in this case on a theory or hypothesis which will admit of the defendant's innocence, it is your duty under the law to do so, and reject any theory or supposition on which it might point to his guilt, even though such theory admits of his innocence.

If the evidence relating to any circumstance in this case is, in view of all the evidence, susceptible of two interpretations, one of which would point to the defendant's guilt and the other which would admit of his innocence, then it is your duty in considering such evidence to adopt that interpretation which will admit of defendant's innocence and reject that which would point to his guilt.

You are instructed that the defendant in this case is entitled to the individual opinion of each member of this jury and that no member of this jury should vote for the conviction of the defendant because of

the opinion of the other members of the jury, as long as he, himself, has a reasonable doubt as to the guilt of the defendant, and should refuse to vote for the conviction of the defendant, notwithstanding any contrary opinion that the other members of the jury may entertain, as long as he, himself, has a reasonable doubt of the guilt of the defendant. [101]

The Court instructs you that your personal opinions as to the facts not proven cannot properly be considered as the basis of your verdict. You may believe as men that certain facts exist, but as jurors, you can only act upon evidence introduced upon the trial, and from that, and that only, you must form your verdict.

You are instructed that mere probabilities are not sufficient to warrant a conviction of the defendant, nor is it sufficient that the greater weight or preponderance of the evidence supports the charge against him; nor that upon the doctrine of chances it is more probable that the defendant is guilty than innocent; but to warrant a conviction of the defendant, he must be proven to be guilty so clearly and conclusively that there is no reasonable theory under the law and the evidence upon which he can be innocent.

In order to convict the defendant upon circumstantial evidence, it is necessary not only that the circumstances concur to show that he committed the crime charged, but that are inconsistent with any other rational conclusion. It is not sufficient that the circumstances proved coincide with, account for and render probable the guilt of the defendant, but

they must exclude to a moral certainty every other reasonable theory but the single one of guilt, or the jury must find the defendant not guilty.

XIII.

That the Court erred, as a matter of law, in denying the defendant's motion for a new trial, to which ruling the exception of the defendant was duly taken and allowed.

JUD R. RUSH,
ALFRED F. MacDONALD,
Attorneys for Defendant.

And upon the foregoing Assignment of Errors and upon the record in said cause, the defendant prays that the verdict and [102] judgment rendered therein may be reversed.

Dated December 12, 1916.

JUD R. RUSH,
ALFRED F. MacDONALD,
Attorneys for Defendant.

We hereby certify that the foregoing Assignment of Errors are made in behalf of the petitioner for a Writ of Error and are in our opinion well taken, and the same now constitute the Assignment of Errors upon the Writ prayed for.

JUD R. RUSH,
ALFRED F. MacDONALD,
Attorneys for Defendant.

[Endorsed]: Original. No. 1098. In the United States District Court, Southern District of California, Southern Division. United States of America, Plaintiff, vs. James B. Simpson, Indicted as James B. Miller, Defendant. Assignment of Er-

rors. Received copy of within Assignment this 12th day of December, 1916. Clyde R. Moody, Asst. U. S. Atty., Attorney for Plaintiff. Filed Dec. 12, 1916. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy Jud R. Rush, Alfred F. MacDonald, Attorneys for Defendant. [103]

*In the District Court of the United States, Southern
District of California, Southern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

Order Allowing Writ of Error.

Upon motion of Jud R. Rush, Esq., and Alfred F. MacDonald, Esq., attorneys for the defendant, James B. Simpson, indicted as James B. Miller, and upon filing the petition for a writ of error and assignment of errors, it is ordered that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit, the verdict and judgment heretofore entered herein; that pending the decision upon said writ of error the supersedeas prayed for by the defendant in his petition for writ of error herein is hereby allowed and the defendant, James B. Simpson, indicted as James B. Miller, be admitted to bail

upon said writ of error in the sum of \$2,500.

OSCAR A. TRIPPET,
Judge of the District Court.

Dated December 12, 1916.

[Endorsed]: Original. No. 1098—Criminal. In the United States District Court, Southern District of California, Southern Division. United States of America, Plaintiff, vs. James B. Simpson, Indicted as James B. Miller, Defendant. Order Allowing Writ of Error. Received copy of within Order this — day of December, 1916. Filed Dec. 12, 1916, at 5 min. past 5 o'clock, P. M. Wm. M. Van Dyke, Clerk. Murray C. White, Deputy. Jud R. Rush, Alfred F. MacDonald, Attorneys for Defendant.
[104]

*In the District Court of the United States, Southern
District of California, Southern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

Bond Pending Decision Upon Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, James B. Simpson, sometimes otherwise known as James B. Miller, of the county of Los Angeles, State of California, as principal, and Daisy D. Simpson, of the county of San Francisco, State of California, and Henrietta Simpson of the county of

Marin, State of California, as sureties, are jointly and severally held and firmly bound unto the United States of America, in the full and just sum of twenty-five hundred (2,500) dollars, to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 13th day of November, in the year of our Lord, one thousand nine hundred and sixteen.

Whereas, lately at a term of the District Court of the United States, Southern District of California, Southern Division, in a suit pending in said court between the United States of America, plaintiff, and James B. Simpson, sometimes otherwise known as James B. Miller, defendant, a judgment and sentence was made, given and rendered against the said James B. Simpson, sometimes [105] otherwise known as James B. Miller, and the said James B. Simpson, sometimes otherwise known as James B. Miller, having obtained a Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment and sentence in the aforesaid suit, and a Citation directed to the said United States of America, citing and admonishing the United States of America, to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, pursuant to the terms and at the time fixed in said Citation, which said Citation has been duly served.

And whereas the said James B. Simpson, sometimes otherwise known as James B. Miller, has been admitted to bail, pending decision upon said Writ of Error, in the sum of twenty-five hundred (2,500) dollars.

Now, therefore, the condition of the above obligation is such, that if the said James B. Simpson, sometimes otherwise known as James B. Miller, shall appear, either in person or by his attorney in the United States Circuit Court of Appeals for the Ninth Circuit, on such day, or days as may be appointed for the hearing of said cause in said court, and prosecute his Writ of Error, and, if the said James B. Simpson, sometimes otherwise known as James B. Miller, shall abide by and obey all orders made by the United States Circuit Court of Appeals, for the Ninth Circuit; and if the said James B. Simpson, sometimes otherwise known as James B. Miller, shall appear for trial in the District Court of the United States for the Southern District of California, Southern Division, on such day or days as may be appointed for the re-trial by said District Court, if the judgment and sentence against him be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, and if the said James B. Simpson, sometimes otherwise known as James B. Miller, shall surrender himself in execution of the judgment and sentence aforesaid, if [106] the said judgment and sentence against him be affirmed by the said Circuit Court of Appeals for the Ninth Circuit, then the above obligation to be void; other-

wise to remain in full force, virtue and effect.

JAMES B. MILLER,

JAMES B. SIMPSON, (Seal)

Principal.

MISS DAISY D. SIMPSON,

HENRIETTA SIMPSON,

Sureties.

Signed, sealed and acknowledged by the principal
December
above named before me this ~~13~~ day of ~~November~~,
1916.

~~THOMAS E. HAYDEN,~~

United States Commissioner in and for the Southern
District of California.

Signed, sealed and acknowledged by the sureties
December
above named before me this 13th day of ~~November~~,
1916.

THOMAS E. HAYDEN. (Seal)

United States Commissioner in and for the Northern
District of California.

United States of America,
Northern District of California,
State of California,
County of San Francisco,—ss.

Daisy D. Simpson, of the county of San Francisco,
State of California, being duly sworn, says that she
is worth the sum of twenty-five hundred dollars,
over and above all *his* just debts and liabilities, ex-
clusive of property exempt from execution, and

that *he* is a resident within the State of California, and a freeholder therein.

MISS DAISY D. SIMPSON.

Subscribed and sworn to before me this 13 day of December

~~November~~, 1916.

[Seal]

THOMAS E. HAYDEN,
United States Commissioner in and for the Northern
District of California. [107]

United States of America,
Northern District of California,
State of California,
County of San Francisco,—ss.

Henrietta Simpson of the county of Marin, State of California, being duly sworn, says that she is worth the sum of twenty-five hundred dollars, over and above all her just debts and liabilities, exclusive of property exempt from execution, and that she is a resident within the State of California, and a freeholder therein.

HENRIETTA SIMPSON.

Subscribed and sworn to before me this 13 day of December

~~November~~, 1916.

THOMAS E. HAYDEN, (Seal)
United States Commissioner in and for the Northern
District of California.

The foregoing bond is hereby approved by me this
December
15 day of ~~November~~, A. D. 1916.

TRIPPET,
Judge of the District Court of the United States,
Southern District of California, Southern Division.

[Endorsed]: No. 1098—Crim. In the District Court of the United States, Southern District of California, Southern Division. United States of America, Plaintiff, vs. James B. Simpson, Indicted as James B. Miller, Defendant. Bond Pending Decision Upon Writ of Error. O. K.—C. R. Moody, Asst. U. S. Atty. Filed Dec. 15, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Davis & Rush & Alfred F. MacDonald, 600 Bryson Building, Los Angeles, California, Attorneys for Defendant. [108]

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California.

Clerk's Office.

No. 1098—CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

Praeceptum (Amended).

To the Clerk of Said Court:

Sir: Please issue a certified transcript of the following matters and documents, or copies thereof, including endorsements, upon writ of error to the United States District Court for the Southern District of California, Southern Division, to wit.

1. Indictment.
2. Arraignment and Plea of Defendant.
3. Order of September 18, 1916, substituting attorneys and withdrawing plea of not guilty, and granting leave to defendant to file a demurrer to the Indictment.
4. Demurrer.
5. Order Overruling Demurrer.
6. Minutes of Trial.
7. Verdict (recorded).
8. Verdict (filed).
9. Orders denying motions for new trial and in arrest of judgment and minutes and orders of proceedings had on December 4th, 1916.
10. Sentence and Judgment of the Court.
11. Petition for Writ of Error.
12. Assignment of Errors.
13. Order Allowing Writ of Error.
14. Supersedeas Bond of Defendant.
15. Writ of Error.
16. Citation to United States of America on Writ of Error.
17. Certificate of Clerk of U. S. District Court to Record. [109]

18. Bill of Exceptions.
19. Praecipe. (amended.)

ALFRED F. MACDONALD,
JUD R. RUSH,

Attorneys for Defendant.

[Endorsed]: No. 1098—Crim. U. S. District Court, Southern District *Court* of California, Southern Division. United States of America, Plaintiff, vs. James B. Simpson, Indicted as James B. Miller, Defendant. Amended Praecipe for a Certified Transcript of Certain Matters and Documents. Filed Feb. 2, 1917. Wm. M. Van Dyke, Clerk. Leslie S. Colyer, Deputy Clerk. [110]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No. 1098—CRIMINAL.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Defendant.

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing one hundred and ten typewritten

pages, numbered from 1 to 110 inclusive and comprised in one volume, to be a full, true and correct copy of the Indictment, Arraignment and Plea of Defendant, Order Substituting Attorneys, Withdrawing Plea of Not Guilty, and Allowing Demurrer to Indictment, Demurrer to Indictment, Order Overruling Demurrer, Minutes of the Trial, Verdict, Minute Order December 4, 1916, Minute Order December 12, 1916, Judgment, Bill of Exceptions, Petition for Writ of Error, Assignment of Errors, Order Allowing Writ of Error, Bond of Defendant Pending Decision on Writ of Error, and Amended Praecipe to Clerk for Transcript, in the above and therein entitled cause, and that the same together constitute the record in said cause as specified in the said Praecipe filed in my office on behalf of the plaintiff in error by his attorney of record.

I further certify that the cost of the foregoing transcript of record on Writ of Error is \$59.10, the amount whereof has been paid me by James B. Simpson, indicted as James B. Miller, the plaintiff in error herein. [111]

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, on this 13th day of February, in the year of our Lord one thousand nine hundred and seventeen, and of our Independence the one hundred and forty-first.

[Seal]

WM. M. VAN DYKE,

Clerk of the District Court of the United States of America, in and for the Southern District of California. [112]

[Endorsed]: No. 2943. United States Circuit Court of Appeals for the Ninth Circuit. James B. Simpson, Indicted as James B. Miller, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Southern District of California, Southern Division.

Filed February 27, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

JAMES B. SIMPSON, Indicted as JAMES B.
MILLER,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendants in Error.

**Order Extending Time to File Record and Docket
Cause to March 2, 1917.**

Good cause appearing therefor, it is hereby ordered that the time within which the plaintiff in error in the above-entitled cause may file the record and docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit be and the same hereby is extended to and including the 2d day of March, 1917.

Dated, Los Angeles, California, January 12th,
1917.

OSCAR A. TRIPPET,
U. S. District Judge.

[Endorsed]: No. 2943. United States Circuit Court of Appeals for the Ninth Circuit. James B. Simpson, Indicted as James B. Miller, Plaintiff in Error, vs. The United States of America, Defendants in Error. Order Extending Time to File Record and Docket Cause to March 27, 1917. Filed Jan. 16, 1917. F. D. Monckton, Clerk. Refiled Feb. 27, 1917. F. D. Monckton, Clerk.

